AMERICAN SOCIAL PROGRESS SERIES

GOVERNMENTAL ACTION FOR SOCIAL WELFARE

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GOVERNMENTAL ACTION FOR SOCIAL WELFARE

AMERICAN SOCIAL PROGRESS SERIES

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BY

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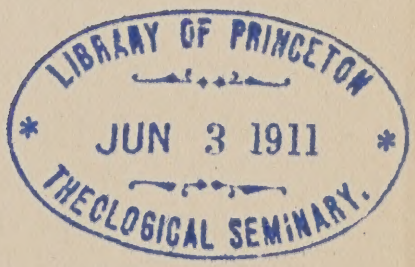
PROFESSOR OF ECONOMICS AND POLITICS
CORNELL UNIVERSITY



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PREFACE

THE lectures which make up this book were given as the Kennedy Lectures for 1907–08 in the School of Philanthropy of New York. When the course was suggested on "Legislation and Administration for Social Welfare," the first plan was a critical study of existing laws for the prevention and checking of special social evils, such as pauperism, crime, vice of various kinds, and the way in which these laws were administered. Such a critical study might be suggestive of improvement. Further reflection, however, on the unpractical nature of some of the proposals for legislation made by reformers and the lack of literature on the nature of the problems which actually face reformers who attempt to secure government assistance, have made it seem best to attempt to go still nearer the source of difficulty and to discuss the various departments of government, their powers, their weaknesses, their practices. Such a study may perhaps ulti-

mately help social workers more in their task of remedying social evils than would a study of special laws which must naturally vary with time, and place, and circumstance. Moreover, in each field experts are found who can work detailed plans out to best advantage, provided always they work under the limitations laid down by our governmental conditions. If this study shall be of assistance to these special workers in determining the metes and bounds within which they must work, and in indicating, however broadly, the ways of approach to governmental assistance, I shall be content.

These lectures are printed substantially as they were delivered. From the limitation of time, the treatment is often brief, even incomplete. They are written naturally in a less formal style and with less careful citation of authorities than would have been by many deemed suitable if prepared only for reading. Possibly in their present form they may not be less useful to the public.

CORNELL UNIVERSITY,
April, 1910.

CONTENTS

CHAPTER I

PAGE

INTRODUCTION: MEANING OF SOCIAL WELFARE

Need of understanding the principles of government . 3
English poor law an example 3
Special topic of book — governmental action for social welfare 5
Two theories regarding functions of government . 5
Difficulties in the investigation of social problems . 6
1. Difficulty of understanding a social problem . 7
Examples of misunderstandings . . 8
Advantages and disadvantages of a technical terminology 10
2. Difficulty of personal prejudices . . . 10
Religious prejudice 11
Political prejudice 11
Danger of judging motives . . . 13
Need of judging impartially our own actions 14
Dangers of habits of credulity and of suspicion 15
3. Difficulty of complexity of society and of human motives 16
Example of economic relations . . . 17

CONTENTS

PAGE

Examples of effects of various influences upon human beings 19
Meaning of a "law" of economics or politics 20
4. Difficulty of mental and moral inertia . . 23
Domination of custom 23
In politics 24
In education and religion . . . 25
Need of independence 26
Inertia a conservative force . . . 27
Advantages for Social Study 28
1. It deals with human beings and is therefore interesting 28
2. The interests of the individual and of society coincide 29
Investigation of social questions by government or by private associations? 30
Government has advantage of financial strength and power to compel testimony . . 30
Government has disadvantage of fear of partisan pressure 30
Combination of public and private investigation often best 31
Meaning of "Social Welfare" 32
Test of right and wrong in society 33
Test of "better" or "worse" in society . . . 33
Relativity of social action to social conditions . . 34
Some qualities probably everywhere good, as unselfishness, courage 35

CONTENTS

PAGE

Example of influence of missionaries in India . 35
Judgment of quality of action must be from viewpoint of the society concerned. Each has its own ideal 38

CHAPTER II

Governmental Organization — its Relations to Society

Society may be improved by natural selection . . 43
Society may be improved by artificial selection . . 44
Exposure of defectives in Ancient Greece . . 44
Selection by immigration laws 45
Improvement by military training 46
Improvement through better economic conditions . 46
Educational measures 47
Effect of personal influence 47
Mohammed 47
Jesus 48
Distinction between the state and other societies . 49
Distinction between state and government . . . 50
Action of government binds the state . . . 51
Officials may act in private capacity 51
Effect on state of personal characteristics of rulers . 53
Characteristics of present government officials . . 55
Official outlook compared with private outlook . . 56
Conservatism of the people, — the referendum . . 57
Legislators compared with experts, with faddists . 59
Compromise in legislation 61

CONTENTS

PAGE

The citizen's conception of government influenced by his environment 62
The poor, the rich, the educated, the reformers . 65
Scope of governmental activity 67
Dependent upon conditions and upon influential classes 68
Rulers controlled by conditions 70
Adaptation of measures to conditions 71

CHAPTER III

Principles of Legislation for the Promotion of Social Welfare

Protective legislation earlier mainly criminal law with penalties 75
Acts innocent in nature but declared illegal because injurious under special conditions . . . 76
Difficulty of fixing line of interference with individual initiative. Examples 78
Laws reflect character of society. Examples . . 79
"Nuisance" 80
Extension of application of law of nuisance . . 81
Changes in nature of penalties with advancing civilization 81
State not only forbids injurious acts; it compels beneficial acts. Examples 84
What acts are to be considered private, what public? . 85
Local governments may well interfere more with personal activities than does the central government 87

CONTENTS

PAGE

State may promote social welfare by developing right inclinations among people 89
Economic and social advantage of reformatories . 89
Economic and social advantage of schools and churches 91
A state religion 94
Effects often accomplished indirectly 97
Tariff laws — marriage laws 97
Parks — playgrounds 100
Taxation 101
Indirect effects of laws to be carefully studied . . 103
Special agencies to fix administrative rules legislative in nature 103

CHAPTER IV

Limitations on Legislative Activity

Prejudices or sentiments of legislature must be considered in form of bill 108
Legislation cannot go far beyond active wish of people 109
Legislators avoid radicalism. Reputation for radicalism dependent on local customs 110
People sometimes carried away by wave of sentiment . 112
Legislators ought to lead public opinion 115
Reform measures sometimes checked by character or interests of legislators 115
Railroad legislation; ballot reform acts . . 116
Law-makers favor gradual adoption of reforms step by step 120

CONTENTS

PAGE

Permissive legislation 122
Compromise in legislation 123
Weaknesses and passions of men must often be attacked indirectly. Effort must be to promote self-control 124
Example of army canteen 125
Need of sternly facing disagreeable facts . . . 129
Need of careful study before action 130
Type of civilization often determines method . . 131
Polygamy and slavery in Eastern countries . . 132
Over-legislation 134
Socialism: its limitations 135
Human character and motives changed little by legislation 137
Relativity the key-word to legislative action . . 138

CHAPTER V

The Work of the Executive in the Promotion of Social Welfare: the Chief Executive

Executive represents State as a whole . . . 141
Ceremonial in connection with Executive . . . 142
Chief Executive has more prestige than one member of Legislature or Judiciary 142
Ceremonial State of Chief Executive in Europe compared with that in the United States . . 143
In the United States President is both Executive Head and Ceremonial Head of State . . . 146

CONTENTS

PAGE

Great influence on Society of social prestige of President or other Chief Executive . . . 147
Example of King of Great Britain . . . 147
Example of Aristocracy of Great Britain . . 147
Example of President in the United States . . 151
President's Veto 153
Relation between Executive and Legislature in the United States 154
Influence on Executive of popular sentiment in enforcement of laws 155
Ought the Executive to enforce rigidly, contrary to popular sentiment: 156
A late law? 157
An early statute not applicable to present conditions though unrepealed? 157
Executive practice in the premises 158
Executive regulations have at times legislative force . 159
Examples 159
Dangers and opportunities of the power and duty of interpreting laws 161
The appointing power 164

CHAPTER VI

The Work of the Executive in the Promotion of Social Welfare: the Civil Service

Subordinate officials often affect materially the work of the Executive 169
Advisers of the Executive and routine officials . . 170

CONTENTS

PAGE

Advisers should work together harmoniously . . 171
Geographical considerations in their selection . . 172
Representation of races or social or economic classes . 173
Routine officials often exercise discretion . . . 175
Example of President's secretaries . . . 176
Preparation of material for Executive decisions . . 177
"Kitchen" or "Tennis" cabinets 179
Unofficial advisers of President — leading business men, labor leaders 180
Dangers of subordinates' discretionary acts . . 183
Discipline in administration; "loyalty" to administration 184
Citizens should note faults of officials and complain . 185
Subordinates follow precedents too slavishly . . 186
Subordinates wish to curry favor with superior . . 187
Methods of selection of officials 187
For advisers, executive discretion . . . 187
For routine work, competitive examination . . 188
Limitations of competitive examination system . . 188
Does not test discretion, judgment, character . 188
Often limits field of selection unduly . . . 189
But under circumstances best system . . . 190
Commissioners: (*a*) advisory for legislature . . 190
(*b*) executive and judicial . . . 191
Methods of selection 192
Adaptation of plans to conditions 193
Assistance of public officials by private citizens . . 194
Need of special investigation before extension of public functions 194

CONTENTS

CHAPTER VII

The Work of the Judiciary in the Promotion of Social Welfare

PAGE

Significance of Judiciary in declaring finally what the law is 197
Frequency of misunderstandings: ambiguity of laws . 198
Application of old laws to new conditions . . . 199
Example of interstate commerce: railroads, telegraph, telephone, airships 200
Discussions on questions of popular interest, like labor laws 201
Especial importance of interpretation of constitution and of the constitutionality of laws . . . 202
Significance of the doctrine of implied powers . . 203
Declaring an act unconstitutional simply asks people to think again 204
Power of judges in determining decisions . . . 204
Power of judges in ruling on evidence . . . 206
Social significance of probate courts 206
Social significance of courts in committing insane, idiots, etc. 207
Judges and divorce 207
Juvenile courts, probation courts 208
Courts of conciliation, Norway, France . . . 209
Methods of selection of judges 212
Judges in their relations to public opinion . . . 213
Non-legal trained judges 214

CONTENTS

PAGE

Courts conservators of rights of people *vs.* Executive and Legislature 216

CHAPTER VIII

The Work of the Citizens in the Promotion of Social Welfare

Social welfare rests largely on private citizen . . 221
Individual must take initiative and need not be official 222
Individuals may and ought to make suggestions to Legislature and Executive 223
Voluntary philanthropic and political associations of great importance 224
Private beneficence 225
Significance of a strong personality 226

CHAPTER I

INTRODUCTION
MEANING OF SOCIAL WELFARE

I

THE irrepressible optimism of the American people so often commented upon by foreign observers is again shown in the title of this series of publications, — "The American Social Progress Series." This spirit of optimism is necessary in order that we may do our best work for the promotion of the social welfare, but too great excess of it leads to careless action. To accomplish the best results, it is desirable that our viewpoint and our bearings as well be clearly understood, and that the principle of our action, whether it be political or non-political, be clear; otherwise we are likely to do harm rather than good. The very grievous error made in England the latter part of the eighteenth century, through the adoption and sentimental administration of the poor law, will furnish for all time one of the most striking illustra-

tions of well-meant legislation resulting in the greatest social evils. By the adoption of the wrong system, wages were reduced so that, generally speaking, only those receiving public relief could find employment. A premium was put upon illegitimacy, and the moral sense of the community was steadily debauched, the condition of affairs continually growing worse until the Poor Law Commission of 1832 was appointed and made its famous report telling what has been characterized as "the blackest tale in English history," and making new recommendations based upon principles derived from experience.

In the first volume of this series Professor Patten attempted to lay down the foundation principles of social work of all types, discussing the bases of civilization as found in the fundamental characteristics of human nature exhibited in the family and other social institutions and in all the various activities of human beings — an inspiring theme treated in a most stimulating way. In the second volume President Hadley, in his treatment of the

standards of public morality, discussed a topic of universal social application, covering activities both private and public, — a most important suggestive study. In the subject under discussion the field of inquiry is of much more restricted area, limited primarily, if not solely, to governmental action. In the field of social reform we have the prospect of progress through different kinds of governmental action, legislative, executive, and judicial. The methods of this governmental activity and the limitations which must be placed upon it in the efforts made to improve society is our topic.

There are two schools of thought which take radically different views regarding the proper scope of governmental action. Some people put little faith in the activities of government, feeling as do the advocates of the *laissez-faire* doctrine in economics that the sphere of government must be strictly limited; that it is unwise, if not even morally wrong, for the government to do much more than police duty in any state. It should only

control criminals and secure practically equal legal rights for all citizens by cutting off the power of seizing privilege from any who in their ambition for place or power or wealth might be unscrupulous.

Others believe that the state should attempt directly and positively to do many things for the people; that it may properly interfere in business so as to control absolutely the capitalistic and industrial world, even to the extent of assuming the ownership of a large part or of all the productive capital in the state. It is important to determine as carefully as possible how much truth there is in each one of these theories and how far it is likely to be wise to trust individual opinion, initiative, and power, and how far we shall do better to rely for our social progress upon the activities of government.

As preliminary to any attempt to draw these lines, we shall do well to consider first some of the difficulties and advantages that there are in any such study, and then briefly to note the nature of society and of government itself.

What are some of the greatest difficulties in the way of such an investigation?

1. The difficulty of understanding a social problem.

Few writers or speakers on social questions really endeavor to use language, as Talleyrand is reported to have said, "to conceal thought." They clearly attempt to disclose their thought. Nevertheless, it is extremely difficult for different people to see things in exactly the same light, and sometimes, for the sake of arousing prejudice, partisans of special movements deliberately play upon this difficulty. I have often been much interested to note the way in which the word "license" is used. In connection with the regulation of the liquor traffic a "high license law" is not uncommon. A large proportion of the people who believe strongly in the prohibition of the liquor traffic, either locally or by state or nation, either by law or in the constitution, look with reproach upon any attempt toward "licensing" such a traffic. They are very likely to feel that such a law implies that the law-making body and the

executive are in some way encouraging the liquor traffic, the word "license" seeming to confer a certain degree of freedom and liberty, or to give countenance to a kind of traffic that they believe to be wrong. If, therefore, there is put on the statute books a provision that every person who sells intoxicating liquor must pay to the state, say, $1,000 a year, and that is called a "high license" law, the hostility of these people will certainly be aroused. This same law, however, might well be described by another group of people as a "restrictive tax" law. It can readily be seen what entirely different feelings a person has toward a "restrictive" law, passed to check or possibly abolish the liquor traffic, from those which he would have toward "high license," which might encourage and promote that traffic; and yet the difference in the two cases is merely that of the name given to the law.

When the United States Industrial Commission was discussing the question of the regulation of corporations and large combinations of capital, it was suggested that such

corporations might be "licensed" to engage in interstate traffic under conditions to be laid down in the law. But in the course of the discussion, attention was called to the fact that the word "license" might be misunderstood and that, while in the recommendation there was no encouragement in any way for the industrial combinations to do things that many people might think were wrong, still, if the word were used, the Commission would certainly be misjudged. In order to avoid this possible interpretation of the law, it was suggested that the various combinations, if properly "regulated," might well benefit interstate commerce. The recommendation was therefore made to "regulate" interstate commerce by prescribing the conditions under which the great corporations might engage in it.

In the study of economics, almost interminable discussion has gone on over the meaning of the words "worth" and "value" and "utility." These controversies have arisen from the fact that with persons differently

constituted, words take on meanings derived from the circumstances under which they live, so that the different minds in the discussion of the same question do not really meet.

In the study of all social problems, then, this fact should not be forgotten, and unusual care should be taken to make the presentation of results perfectly simple and lucid. There has been much discussion among students of social problems as to whether there ought not to be a scientific terminology prepared by some committee of experts upon the meaning of which all might agree. Inasmuch, however, as most social problems are of great public interest, and furthermore need to be easily understood by a great many people, in order that their solution may effectively improve our social life, it seems best to avoid technicalities and to make the simplest and clearest use of ordinary words, qualifying them wherever necessary, so that their meaning may not be misunderstood.

2. The difficulty of personal prejudices.

Fair-mindedness is a rare gift. Most of us

are prejudiced in our discussions of social questions, whether political, economic, or religious, or of questions that may in any way involve a criticism of our personal habits of life. How rare, for example, would be the ardent Protestant who could really see perfectly clearly and distinctly the viewpoint of a Roman Catholic on a religious question that touched social life. And yet most thoughtful Protestants wish to be just. How frequently in the discussion of political questions do we find Republican newspapers, orators, and voters expressing the opinion that if the Democrats were to win in the pending election the welfare of the country would be seriously endangered. I recall a remark made in the campaign of 1896 by a very distinguished, highly educated man, who had had a wide experience in public affairs, to the effect that if Mr. Bryan should be elected President, he believed there would be serious danger that the Constitution of the United States would be violated. Many will recall that in the discussion of the silver issue in that campaign the Republicans referred

constantly to the "dishonesty" of the silver men and of Mr. Bryan, while, on the other hand, the Democrats declared that those who advocated the gold standard were attempting to get their debts paid twice over, and that in consequence they were dishonest. The striking fact is that both classes of people believed sincerely what they were saying. Neither party seemed to realize that the members of the other party were all citizens of the same country; that all alike were interested patriotically in the country's welfare. It might well be that some mistake might be found in their reasoning or in their judgment, but in the event that they found after the election that there had been a mistake made; if experience showed that the winning party had been in error, they could reverse their action after they were in power; and any group of office-holders, seeing that their policy was directly injurious to the country, would doubtless change that policy. These bitter attacks on their opponents came in part from self-interest, but primarily from human prejudice. This fact ought to be

strongly emphasized, because in nearly all social questions we often make wrong judgments because of prejudice. If there is any special mental quality which is of peculiar advantage for the study of social and political questions, it is the ability and the habit of looking at questions impartially and of freeing one's self from prejudice.

We are usually too ready to impute wrong motives to other people. We judge, and we ought to judge frequently other people's actions. We ought to be extremely cautious about judging their motives. In criticism of others, it is often helpful to ask, What would I do if I were in that person's place? and to try as far as we can to imagine ourselves in exactly the circumstances of the other person. If we can fairly well take that point of view, our judgment will generally be far more charitable than it is.

Another way to help ourselves in making a proper judgment on a social question is seriously to attempt to see ourselves and our actions and our thoughts as other people look at

them. "To see ourselves as others see us" is not merely a poet's wish, but it is an essential characteristic of any person wishing to make careful social studies. This does not mean that one should worry over what other people think of him, — far from it, — but that he must be able to make a fair criticism of his own weaknesses. Most of us have had the experience of finding ourselves in argument with a man, perhaps as well read, as experienced, as able as ourselves, of feeling convinced that his arguments were weak, if not nonsensical, and yet of noting that many of the bystanders, perhaps even a large majority, agreed with him. That fact perhaps will not make his arguments appear less weak or our arguments appear less strong, but ought it not to lead us in all fairness to inquire whether he may not be right and we wrong, and will it not tend to clarify our views on the subject if we make this deliberate effort to put ourselves in his place and to see his argument exactly as he sees it and to see our arguments also through his eyes? It is not too much to say that a person is not really

fitted to judge any social question unless he can criticise himself from the point of view of others, or at any rate can, with a reasonable degree of accuracy, judge his own actions and see those of others from their viewpoint.

Some time since a man was making for me an important social investigation. I was compelled eventually to discharge him because he seemed to be altogether too guileless and unsuspecting. Sent to investigate certain institutions, he reported that they were all right, all doing well. He had no criticism to make. From other sources I heard that their work was in many respects faulty. Another agent sent to investigate not merely discovered that things were going wrong, but brought the proof. The first agent was too guileless and unsuspicious by nature to do thoroughly good work in social investigation. And yet, on the other hand, the danger is equally great of being too suspicious. In that same investigation a second man was working who was said to be so suspicious of everybody and everything that his judgment could not be trusted. In

order to avoid injustice his statements had to be tested and accepted only when they were proved right. But from the point of view of a man whose business it is to investigate, it is a good thing to be of a suspicious nature. The man, however, who is to make the final judgment, to advise action, must be able to weigh evidence, to see faults on the one hand, but to see equally clearly good qualities on the other, to set aside prejudice and see things as they are.

3. The difficulty of the complexity of society and of the motives that influence people in their social activities.

That society is very complex is a trite saying; but unless we have attempted to make some social study we can scarcely have a realizing sense of the almost infinite complexity of every social act, however trifling. In a class in economics some time since, the attempt was made to indicate in general terms how many people must be at work in order that a young man might wear a silk necktie. Any one familiar with our tariff laws will know that a silk necktie costing not over $.50,

has doubtless been manufactured in the United States, and the manufacturer must have had a number of people at work in his factory in order to produce this necktie. Besides these, many people had been put to work erecting the factory; others had built the engines furnishing the power; others had worked in the mines to get the ore for the steel; others still had been working in the forests to cut the timbers; others had been delving in other mines to produce the lead for paint; others had been working in the fields to raise the flax from which came the seed that was crushed to make the paint oil. A silk tie made in this country is almost certainly produced from raw silk imported from either Japan or China. Under those circumstances many other groups of people have been at work, — those on the railway between the eastern manufacturing city and Seattle or San Francisco, where the silk entered the country. Still other people had built the railroads; others, the bankers, had financed the roads. Many sailors had been employed to bring the ship bearing the

silk across the sea; still others had been engaged in building the ship, in mining the ore, manufacturing the steel, cutting the timbers from which the ships were built; the people in Japan and China had been engaged on the plantations in producing the silk; hundreds in other groups in transporting it to the ships. Back of all these come the thousands that had worked at producing clothing and food and shelter and supplies of all kinds for all these workers engaged in all these lines. One might go on almost indefinitely tracing out the labor connected with the production of almost any single article which satisfies any human desire. Almost anything, however small, involves the work of many different people; thousands, many thousands have been at work in order that any one of us may have some little luxury that we desire. Most astonishing it seems when one realizes how many thousands of people are at work in order that one little article may be furnished; and especially how, with all this complexity, everything is done in order; there is no confusion;

moreover, how by paying for any article that we buy, as for example, the silk necktie, we practically pay each one of those thousands of people for the share which he has had in the production of that article. Any example of this kind illustrates the marvellous complexity of the social organism and shows how extremely cautious one must be in attempting to deduce the principles of social organization which bring about such wonderful results.

The complexity of the motives that determine human action, and that are thus really the social forces bringing about changes in society, has likewise been mentioned. The task of the student of natural science is simple compared with that of the student of any social science, because the one can be in good degree exact, the other cannot. The chemist may say, I put into this retort a certain quantity of a certain product; I add to that a certain amount of another product, and I can predict the result. But if he were to go a step farther and use that same drug as a medicine, he would not be able to tell with the same degree

of exactness the effect of the drug upon a patient. A physician knows that any common medicine does not have the same effect on any two patients. Moreover, the action of a medicine on the same patient at different times under changed circumstances, which the physician cannot himself recognize, will be different. But even to foretell the action of a drug on a person's physical condition is simple as compared with finding out the change in mental attitude produced by any act. You can much more easily tell the effect upon a man's body of giving him a double quantity of whiskey than the effect produced upon his mind or actions. We know how impossible it is to predict with any degree of certainty what will be a man's thought, his conclusion, his action from almost any argument that we may present, or any act that we may perform. Because of this complexity of human motives, social principles, political principles, cannot be cut and counted and determined as can physical laws. We do use the expression, "a law of economics" or "a law of politics." This means little more than

that under certain circumstances we shall see in society a tendency in a certain direction or that in all probability very many people will act in a certain way under certain circumstances. But we may be sure that there will be many exceptions. The astronomer may predict an eclipse to the minute. The physicist can determine with accuracy the working energy of an engine; the economist can say that a lowering of price of any article will probably increase the sales, but the factors are too complicated for him to tell how large the increase will be that will follow a reduction of 20 per cent. The statesman cannot tell how many votes will be gained or lost by a reduction of 10 per cent in the tariff.

In the earlier days it used to be an assumption of economic science that men in business were moved solely by the desire to gain wealth with the least possible expenditure of energy; and many philanthropic people, not realizing that this assumption was merely a device of reasoning, presumed that the economist and the employers of labor were inclined to be hard-

hearted, even inhuman. But every real economist had recognized that employers of labor, while moved chiefly perhaps by the desire for gain, nevertheless had often sentiments of sympathy with others, pity for the unfortunate, affection for their relatives and friends, and were often even public-spirited. In later years it has been found best to attempt to estimate in various ways the relative force of the different motives which affect the business man in his career, and likewise to judge as far as possible the manifold influences which affect the average citizen in all of his daily affairs, so that as accurate a prediction as possible may be made regarding future economic or political phenomena. The ablest business man is likely to be the one who judges most accurately people in their business lives by his knowledge of these motives; and by working in accord with them he is able, without harming society, to increase best his own profits. Likewise the politician, — not only the politician in the worst sense, the boss, but also the politician in the best sense of that word, — the

statesman, if he is to bring about the best results in his work for the public welfare, must estimate carefully the force of these varying human motives in order that he may attain the best results from his political activities. Nevertheless, however acute their knowledge may be, the complexity of these motives is so great that even the ablest of business men and the wisest of statesmen will at times make mistaken estimates.

4. The difficulty of mental and moral inertia.

Akin to the difficulty of understanding the thoughts and motives of other people, perhaps even largely the cause of this difficulty, is that which I have ventured to call "mental inertia" — the disinclination which most people have to change a habit or custom or to take up any new thing. Few of us realize how much we are dominated by custom, how little we originate. Still fewer of us recognize the disadvantages to ourselves and to society, as well as the advantages that under certain circumstances come from this human trait; and yet the evidence lies at hand. We have but to

note how practically all men and all women in any community follow fashion as regards their clothing, the way in which they shall serve their dinners, the style of vehicle which they shall use in transporting themselves from place to place, the way even in which they shall amuse themselves. All of us follow the same custom, not because we have deliberately thought out beforehand that following the custom will give us the greatest comfort or the keenest delight, but rather since other people seem to be doing this we do it also, because this is easier than to think up something new. We drift unconsciously.

But this inertia which leads us to follow rather than to originate affects most profoundly our entire social life. Men join political parties; and because they have once, not attached a party name to themselves, but attached themselves to a party name, they remain Republicans or Democrats throughout life, even though the principles of the party may change, even though at times the policy may be even reversed. Not principles, generally speaking,

determine the votes of the citizens, but the inclination to do as one has done before, the ease of following a leader rather than of thinking for one's self. Those who in practice affect the social welfare by carrying elections to secure the adoption of a certain policy find the doubtful voters few, perhaps one in ten, and need only to secure the adoption of their policy by a few leaders in order to know that the great mass of the voters will follow.

But fashion rules not merely everyday life and politics but education and religion as well. Our children are practically all educated alike, and whenever a new educational feature is adopted by some wide-awake progressive person, or perhaps by some foolish fanatic, it is likely to set a new fashion which will be followed by thousands with comparatively little thought; and thus a change is made in our educational system, not by the will of the many, but by the thinking of a few and the following of the many. Likewise in religion. Most persons join the church in which they have had their early ideas formed without any care-

ful thinking of the differences between this church and others. They perform the regular religious observances with no real thought of their fundamental significance or of their emotional or spiritual value, simply because they are the observances to which they have been accustomed. Church, as well as state and society, is dominated by the easy-going habit of letting things drift.

The man who makes a decided success in business or education or politics or religion is the man who can break away from the dominating power of custom, from the personal inertia which leads one to drift into a habit, and who has energy enough to think for himself, to determine what new habits he shall make, and then to act accordingly. But energy alone will not suffice; it must be energy properly directed. The difference between the genius and the fanatic or the crank is simply this: the one has judged accurately the forces with which he is working and the results that can be reached; the other, with perhaps equal originality, equal energy, equal power to over-

come his own mental inertia, has misjudged the forces and the results.

But there is another and possibly a better side to mental and moral inertia as a factor in social life. It is the conservative force. It is through their subservience to custom that great masses of people are molded into parties and states; that they can be brought together for united action. Possibly it is because of this inertia that we have orderly governments instead of anarchy; and it is a question which every social reformer, every successful statesman, must face, — whether society is better off with relatively few chosen leaders whom the masses follow, or with a stimulated, aroused throng of individuals, each of whom thinks for himself and tries to carry out his own will. The ideal of democracy is, of course, a combination of the two, — a people made up of thinking, independent individuals, with intelligence and judgment enough to recognize the real leader whose views will promote the public welfare, and with wisdom and self-control enough to select and follow intelligently this

leader as long as his policies point toward the uplifting of humanity.

One might dwell at length upon other difficulties that arise in the study of social problems or in the attempts to solve them, but enough has been said to indicate clearly this side of the study. We may next consider some of the advantages that investigators in the social sciences have as compared with those in other lines of study.

1. A young woman who wished to engage in some kind of social work, said recently: "I want to do something that deals with human beings. I haven't any interest in mere figures. I don't want to do statistics and stop there. I want to touch people." Now that is one of the very great advantages in all kinds of social study. Such studies deal with human beings, "touch people"; and we are interested in men and women. We may be thorough in questions of figures, but most persons will not be interested in figures unless they have a significance in terms of flesh and blood and mind and soul.

2. Another advantage is that in the long

run, viewed from the highest standpoint, the interest of the individual and that of society coincide. Many will question this statement. There is a well-founded belief that human selfishness is the dominant force in society. But mere selfishness is short-sighted, and the man who sees his own truest and highest interest will generally recognize that whatever he does that is best for society is best for him. This requires that one believe character to be of much more consequence than reputation; that the gratification of one's conscience is something that can be set off against loss in the satisfaction of some lower desire, even that of physical comfort; that the consciousness of duty done may be a full compensation and more for pecuniary loss; that service to others is a real source of personal satisfaction. If one takes this view of life, the true interest of the individual coincides with the interest of society. If that is the case, it is certainly of very great advantage in any social study, sufficient even to justify any one in making it his life work.

The question is sometimes asked whether it is best to have social investigations made by the government or by private committees or commissions. Both forms are clearly desirable; both have their special advantages. Many investigations, as for example, one into the workings of the great corporations in the United States or immigration or the spread of tuberculosis or pauperism must, to be successful, be made on so large a scale and involve the expenditure of so much money, that these studies can usually best be carried on by the government. Moreover, in some of these investigations it is desirable to ascertain what some people might wish to conceal. It may therefore be desirable to examine witnesses under oath, to have the power to compel the production of books and papers and accounts. For investigations of that type the government is clearly best fitted.

On the other hand, we know that governmental investigations are sometimes influenced by political pressure, by the desire to secure partisan advantage, although that is rarely the

case in scientific investigations of the type indicated. Even aside from the desire to secure partisan advantage, men in political positions often wish to secure appointments for friends or constituents, and men appointed for such reasons are often not the best fitted for scientific investigation. Fortunately, pressure of this kind is much less frequent now than earlier, and there is little to fear from such a source beyond possibly slightly added expense.

The advantage of examining witnesses under oath is in part offset by the fact that many, perhaps most people will give information more freely and more accurately if they talk alone with trustworthy individuals, unless the information desired be such that they feel they must withhold it except under compulsion. It is practically impossible, then, to say beforehand that the advantage is either with governmental or with private investigations. It is necessary first to know the special subject and the particular needs to be met, then to decide upon the source of support, the methods of investigation, the persons who are to control and direct

it. To secure the best possible results, investigations may perhaps best be made both ways, each to supplement the other.

The special subject for our investigation is the relation of governmental activity to social welfare. It is important that we make clear at the beginning the meaning of "social welfare," as that expression is to be used. We shall consider it the welfare of society in the sense of the satisfaction of human needs, physical, mental, moral, in the light of the highest civilization. It is to be granted, of course, that the statement that we are to estimate these human needs from the viewpoint of what we believe to be the highest civilization, is somewhat indefinite. But can it be made more definite? For the improvement of society, we must of course have some ideal toward which we shall work; we must have some conception of what improvement is as compared with the present condition. The only way to reach such a conception is to consider our needs from our own viewpoint of what we believe to be the highest civilization.

It is quite possible that people in another country or people in another section of our own country or people in different social surroundings from those in which we dwell will have a different ideal. Some of them might even think that what we believe to be an improvement would really be a detriment. Such differences of opinion we cannot avoid.

Is there any absolute test of what is right and wrong in social matters in all societies? Is there any absolute test as to what is better and what is worse in all societies? Probably not. Each society, as a practical matter at any rate, must stand largely by itself. From the practical point of view from which we have to work, the best we can do is to say, — I will work for what I think best. Each one of us has to make his own judgment. Other people will judge us, we shall judge other people; but when we come to our own activities, we must all make our own judgments and work toward our own ideals.

Each civilization is likely to have a different ideal. We consider monogamy as the best

and only good and right system of marriage for our country and our civilization. But it may well have been that in other stages of society under different types of civilization there may have been circumstances under which polygamy would be better for a society than monogamy. It is the belief of our ablest writers on the science of society that in the earlier stages of civilization, when warfare was prevalent and the most vigorous and ablest males were rapidly killed off, the monogamous society would, of necessity, yield ultimately to the polygamous. Of course that question is one with which we cannot deal now as we would if our state were in an era of continual warfare. So most other questions that would be raised by different civilizations are relative matters, dependent on local conditions. Each question has to be considered in the light of its own civilization and of its own conditions.

Certain qualities in human nature, certain types of personal activity in society, would probably be looked upon favorably in practically all civilizations and under all circum-

stances, but it is a question if there are enough of them so that we can venture to lay down any general principles. Unselfishness would probably among all peoples in all stages of history be considered a personal virtue, and yet economic self-interest is a very good motive, possibly the best motive, for the advancement of economic society under some circumstances. Courage is a quality admired everywhere, in barbarous and primitive societies as well as in those most advanced in culture and civilization. And yet the type of courage and the manifestation of self-interest would be different in different civilizations.

A British resident guiding one of the native states in India a few years ago, speaking of the missionary work in that country, said in effect: "The missionaries are the greatest nuisance in India. They make the residents more trouble than all other people put together." Then, hesitating and laughing somewhat, he continued: "But, after all, I must recollect that I am perhaps somewhat annoyed to-day because a 'fool' missionary brought me

a difficult problem that is going to make me much trouble and disturb me more than anything that has happened lately. But just after speaking I remembered that the first person to whom I went to get assistance in my trouble was another missionary, an old Scotch Presbyterian who has been here many years, who knows India and who knows the circumstances under which I must act." Then he went on to discuss some of the excellent influences of a high western civilization among some of the most ignorant and least civilized of the inhabitants of a certain section of this great Oriental empire, so crowded with various civilizations, high and low. In substance he continued: "Speaking seriously of the influence of the missionaries in India, I should say that next to that of the British officials, the greatest single uplifting influence on the Indian people is that of the missionaries. I place the British officials first, because we teach the Indian people justice as they have never had any conception of it before, the necessity of a just law and of its impartial administration. That is perhaps

the greatest single uplifting force, but next to that I place the missionaries and their work. I object to many missionaries because they are narrow-minded, but I cannot say that they are not absolutely honest and truthful, and most natives of India have no conception of truth in the western sense. The value for good to such a people of having men and women among them who always tell the truth is very great.

"Then the missionaries are, almost without exception, men and women who live clean moral lives, while the people among whom they live have little conception of personal domestic morality in the western sense of the word.

"The missionaries are unselfish. Whenever the plague, the cholera, or famine come, others run away, often abandon those dependent on them; the missionaries stay. They may send their wives and children into the mountains, but they remain among the people at the risk of their lives, and the people know it. If you place even among these people men and women who always tell the truth, who are clean in

their personal relations, who do their duty as they see it, who are unselfishly devoted to their work, you have paved the way for a great change in society which cannot fail to be of the greatest benefit. On this account I say that next to the British official I rank the missionaries as the greatest single uplifting influence in India."

It may be, then, that there are certain qualities of mind and heart that will count for good in every community, that any influence which tends to spread these qualities cannot help but further social welfare, and that this influence works best through personal contact. We must realize that the study of social questions differs among different peoples; that we cannot advocate the same form of society in China that we would prefer in America; nor can we expect to adopt immediately in the Philippines a form of government or of society that would be fitting in New Zealand or Canada.

We must always judge the excellence of any policy, political or social, from the point of view of the society to which it is to apply;

and when we deal with the promotion of social welfare in the United States by governmental means, we must keep the viewpoint of our own country and of our civilization, and it must be our ideal of what we believe to be the highest civilization that shall determine our actions.

CHAPTER II

GOVERNMENTAL ORGANIZATION — ITS RELATIONS TO SOCIETY

II

A NECESSARY preliminary to intelligent plans for the promotion of social welfare is an understanding of the nature of society itself, since society is composed of human beings related to one another in various ways and may be improved or may be harmed by changing these relations.

It is reasonable to believe that society may be improved by natural selection and the survival of the fittest, as are often the species of animals. The care of the weak and unfit in highly civilized society seems to militate against this, but is amply justified by the humanitarian moral effect upon society. Political philosophers have often believed that under certain circumstances society may be improved by artificial selection, as we expect to

improve domestic stock by selected breeding. It was a well-known custom in ancient Greece to have sickly or deformed children exposed to death, in order that by thus eliminating the weak the mental and physical qualities of society as a whole might be strengthened. It was the dream of Plato in his Republic, as it is of some writers even to-day, that a selection of the best and noblest citizens might be made, from which could be bred societies of a higher and nobler type than anything heretofore found on earth. This process of directly improving by governmental action the stock of a community is something that our type of civilization will not, at the present time at any rate, seriously consider. Popular as is becoming much of our talk about "Eugenics," we believe too strongly in the principle of individual choice to permit government direction. We prefer to trust to natural inclination and individual common sense to bring about good results rather than to leave matters so important to governmental action.

On the other hand, we must recognize that

there is a certain type of artificial selection held by large classes in the community to be peculiarly suited for governmental action.

Most people believe that our immigration laws should exclude from the state the criminal, the weak and ill, the inefficient, in order that our society may be protected against the ill effects of the intermingling and inbreeding. Some countries go farther and deliberately encourage the immigration of people whom they believe to be of the best type for improving the population of their country. Canada offers a bounty for the encouragement of the immigration of Americans, of British subjects, and those of some other selected countries in distinction from those coming from certain sections of Europe. Governments have frequently made serious efforts to improve by artificial selection the quality of their citizens and to prevent by restrictive action the deteriorating effect of an influx of people whom they consider unsuitable for citizenship. Through governmental action upon immigration, then, much can be done to strengthen the population by improv-

ing the quality as well as by increasing the numbers.

The quality of citizens, it is thought, is often improved by military training. The Germans believe that their quality of citizenship is greatly improved, both physically and morally, by the compulsory military education given to all able-bodied young men for a period of years, so affecting their physical qualities and their mental habits that the good influence will follow them through life.

Whatever the government can do to improve economic conditions and uplift industrial society is likely to affect favorably not only the physical welfare of the people, but also their mental and moral qualities. Though with James Russell Lowell we believe that the only "measure of a nation's true success is the amount it has contributed to the thought, the moral energy, the intellectual happiness, and the spiritual hope and consolation of mankind," we may likewise agree with him that material success is not only good but that it is also "the necessary preliminary to better

things." Our governments, therefore, should not overlook that necessary preliminary, but should do what they can to improve economic and industrial conditions.

All our educational systems, whether public or private, are intended primarily to influence favorably the social welfare, and our governments can perhaps take no more beneficial action than carefully to study and employ the best systems of education of different countries at different times.

But without going into details regarding these various systems, we should consider the modification of society even politically, without governmental activity, through the personal influence of individuals. Most of us are not likely to underestimate the effect of orators upon public activities or of the editors of our great newspapers in determining social action, but we often underestimate the indirect effect of the work of teachers and religious organizations upon political and social life, often the most potent influence in bringing about social betterment. We know how profoundly

the teachings of Mohammed have shaped the entire civilization of many millions of human beings, and how the Buddhistic teachings of gentleness and kindness and the wisdom of acquiring merit in order to shape beneficently future existence has changed the entire course of oriental history.

Likewise the political significance of the life and teachings of Jesus has been generally greatly underestimated. As I understand those teachings, the most fundamental difference between him and those who preceded him is that he insisted more than they upon the worth of the individual, upon the principle that each man should take upon himself the responsibility of determining his life and not attempt to put off that responsibility upon priest or parents. This attitude makes strongly for independence of character and reliance upon one's own judgment, and in consequence influences profoundly human action. This feeling of individual responsibility that came prominently into the world through the teachings of Jesus Christ more

than any other one thing has directed the whole trend of civilization since his day toward democracy. Jesus was not directly a teacher of politics, but his ethical and religious teachings have in the way indicated had a decisive influence on politics. Thus indirectly as well as directly the government, too, may modify society or private individuals; and by exerting an influence upon human character may affect profoundly the social welfare.

In order that we may lay a somewhat broader foundation for detailed study, we need to look into the nature of government and of the state. The state is simply the community organized, — society organized, self-governing, self-directing, complete. It differs from other societies in that regard. They have to rely upon the state to have their wishes and desires put into effect. If a church or an insurance company or a political party wishes to carry out a certain line of policy, it must go to the state for its authority. All other societies rest upon the authority given by the state. The state itself stands self-sufficient, self-directing,

both in its relations outside itself with other states and in its relations within, as it controls its citizens. The government, in distinction from the state, is simply a committee, — its active agent, formulating its will into laws, then putting that will into effect by the administration of the laws.

This distinction between the government and the state is of vital importance in any careful consideration of governmental action affecting social welfare. Whatever the form of the state, whether monarchy, despotism, republic, the government stands for the state, is the agent of the state to carry out its will, and the state can act only through it. No group of individuals except the government represents the state, and whether the state declares war or fights a battle or cares for the revenues or grants appropriations or makes appointments, it must carry out its will in doing these acts through the government. In a democracy, of course, the state is in a position easily to change the personnel of the government.

If the government stands as the responsible

agent of the state, it ought, of course, to do everything as the state directs. Although the government may be made up of a very few men representing the state, its act binds all citizens, whether they agree with it or not. Under these circumstances, a great responsibility rests upon officials. Rulers, government officials, need at times to distinguish between their official action and their private action. Frequently they talk in their private capacities without attempting any action. They discuss public questions in order to find out what the citizens want and whether they are likely to approve certain lines of policy under consideration. Instead of directly asking the opinions of the public an official often openly discusses the matter, has opinions quoted in the newspapers and commented upon; and thus finds out the will of the community, in order that he may then carry that will officially into effect.

For example, in Great Britain, the Cabinet, the Government frequently so-called, holds its official position as long as it can control the

majority in the House of Commons. Whenever the Cabinet puts forward any important measure as its own and is beaten, it must resign or call for a new election. In many cases there are measures which the members of the Cabinet believe it would be a good thing for the state to adopt, but which they are afraid to test formally in parliament. In consequence, instead of accepting a bill on that subject as a governmental measure, they sometimes have this same bill introduced by a private member, have men speak in its favor as private members of the House of Commons, and thus avoid their governmental responsibility. If the measure secures a majority, well and good. If it fails in this regard, they avoid the responsibility. When, however, any government takes the responsibility and acts, it is carrying out the will of the state for the time being; and that is practically the only way in which the state can express its will.

Many people, especially perhaps those who are primarily interested in social improvement, do not realize that government is human.

The government, in fact, is made up of ordinary men, some of us, and it really does not change a man's character to elect him to office, nor does it increase his ability. Practically in no way does it change him except at times to give him a sense of responsibility, if he is the right type of man. If he is the wrong type of man, it may give him opportunity to misuse his power; but under most circumstances he is the same man as before, with the same prejudices, hopes, aspirations, ambitions. If he was selfish before, he will be selfish now. If before he became an office-holder he was a man not of the energetic sort, now as an office-holder he will probably neglect his work. If he was a man devoted to art and literature, he will be likely to wish the state to favor the development of artistic and literary tastes among the people. If he was a man whose hobby was education, presumably now he will ride that hobby at the public expense. Inasmuch, however, as the man in public office has practically the same characteristics as before, we can see that these personal characteristics of

our officials will often determine very greatly the type of government that we shall have.

Consider the different policy that presumably would have been followed if at the time of the Civil War we had had, not Lincoln, but Douglas or Seward as President; both men of great ability, — honest, with a keen sense of responsibility; but the differences in the personal characteristics of Douglas and Lincoln or of Seward and Lincoln would have given us an entirely different type of government, due largely to the personal characteristics of the man in office. From the records of the time we know that Seward propounded various schemes to Lincoln, the adoption of one of which would doubtless have involved the country in war with England just at the outbreak of the Rebellion. His way of looking at things, his lack of foresight and of statesmanlike judgment, as compared with Lincoln's, would have brought war instead of preserving peace. In putting forward, then, a plan of social reform, we need to consider carefully the men in official positions who will

have to administer the law, if we wish to be sure of carrying out our reforms. Circumstances mold men, to be sure, but it is no less true that men mold circumstances.

Consider briefly the type of men that we actually have in our government in the United States. Our newspapers, and in many cases our orators, who favor reforms, speak bitterly in depreciation of the character of our public officials. On the whole, however, our government, both federal and state, is composed of able men, much abler than the average citizen. Although there are some among them who are weaker, both mentally and morally, than the best private citizen, we shall find that, on the average, they are conscientious men who fill their official posts, under the circumstances, as best in their own judgment they can.

A gentleman of wide experience in public life, who has held important governmental positions and who is familiar with legislative bodies as well as with college faculties, has lately said that he thought that the average member of Congress was fully as moral and fully as able

as the average member of a college faculty and probably a little better. A college man naturally believes that college faculties in character are considerably above the average man, and yet this well-equipped observer believes that Congress averages still better. Any one who has had many dealings with public men will testify that usually they take their places seriously, earnestly, and that, with individual exceptions, they are a hard-working, conscientious body of men.

Again, the government official in the high positions, whether legislator or executive, is likely to have a broader outlook upon social conditions, to be more unprejudiced and more practical than is the average private citizen in the consideration of legislation along social lines. Notice that I am speaking of the average private citizen, not of the specialist who has made a business of social study. Naturally the specialist is better informed and presumably has a broader outlook than the average legislator, but the legislator is the superior of the average citizen both in outlook and in lack

of prejudice. As individuals, unless we have especially studied a question, we generally take the judgment of the man who brings the question to us. He is likely to be prejudiced and, in taking our judgment from his, determining our action by his, we are likely to become one-sided. The member of a legislature generally cannot be put into that position. He usually has several sides of the question presented to him by not only its advocates, but also its opponents, and generally, on a matter of consequence, he must have listened to so many arguments that he cannot well be narrow-minded.

It will also be found that our public men are usually more conservative than are the radical reformers. Though probably less conservative than are the masses of the people, they are less likely to be carried away by a gust of passion and suddenly impelled to pass a measure against the public interests. The experience of Switzerland with the referendum and the initiative is very suggestive in this connection. Many persons, especially the somewhat radical reformers, believe that the initia-

tive and referendum should be adopted in both federal and state legislation, and already a beginning has been made in that direction in a number of our states. The impression seems to be that reform measures could be more easily passed, and that our government would be more progressive than under our system of representative government. The experience of Switzerland has been otherwise. In that country many progressive measures passed by the legislatures, when submitted to the people on petition, have been defeated. And even in the case of the obligatory referendum, where all measures of importance which are passed by the legislature must be submitted to the people for their approval, a considerable portion are regularly rejected. This, perhaps, is to be expected. We have already considered at some length the mental inertia which leads us to prefer our customary ways of doing things and our disinclination to make the effort involved in change. If, then, we are asked to vote for a change in policy, especially if that change is somewhat radical,

we are likely to feel that we have been getting along fairly well and are not certain about the effect of a change; and furthermore, we are unwilling to take the trouble to investigate the question thoroughly. In consequence we vote against it. If the matter is pressed upon our attention again and again, we may eventually make the change; but experience will probably show that in most civilized countries legislators who, from the nature of their task, are compelled to study more or less completely questions brought before them, and who, moreover, like to make a record of accomplishment, are likely to be less conservative than the masses of the citizens.

On the other hand, they are naturally more conservative, perhaps we may even say less progressive, than are many radical reformers who are often willing to try an experiment. They are perhaps also less progressive than the most thoughtful and ablest students of social questions who, by their studies, have prepared themselves for an advance movement.

Generally speaking, members of legislatures,

from the nature of the case, are ready to give a courteous, patient hearing to those who have matters of real public importance to bring before them. On the other hand, few realize how extremely burdened with work conscientious members of a legislature are. Any careful study of the situation will show that bills are introduced by the hundreds, often by the thousands, and are so many in number that the average member of the legislature cannot even read them all. The work of investigation must, of course, be done in committee; each member is placed on perhaps two or three committees, and in the work of some committee must make a careful investigation of a number of bills. On others he is practically compelled to take the judgment of members of the House who have made them a special study. Presumably he will accept the reports of the members of the committees of his political party. Legislators, as busy men, are naturally like other business men, ready to take up questions of importance, but impatient with faddists and bores.

Members of legislatures, too, wish to be considered practical men, and one is not likely to take up and urge a measure unless he believes that there is a good chance of success. He is likely to say, There is little chance of getting that measure through now. Come back in four or five years and we will see what can be done. Or, noting the conservatism of his fellow-members, he may urge that only some portion of the bill be taken up, and that the entire reform be accomplished step by step, a little at a time. Usually his judgment on such matters is right. Seldom is a bill put through against the judgment of the reasonable, able, conscientious legislator. And yet naturally he wishes to do what he can for a good measure. He wishes to make his record.

Realizing, as few persons outside of legislatures do, the difficulty of securing enough votes to pass any controverted measure, the legislator is likely to be more ready to compromise than are most reformers. If, when it comes up in committee, a member wishes one clause changed here, another clause changed

there, before he will favor it, the advocate is likely to say, "If I cannot get the best I wish, I will take the best I can get," and he will compromise, on the principle that he can get something this year, more next, and finally carry out his plan complete. As legislators act, so also will governors and presidents, and so also must those who wish to accomplish much in the direction of social reform.

A prime factor in the promotion of social welfare is the attitude of the citizen toward his government and the conception that voters of all classes have of the state and of the state's activities. This attitude of the citizen toward his state is largely a product of local circumstance. Some years ago it was a common saying that if a working-man, living on the East Side in New York City, wished a job in building one of the street railways, he would be told that if he could bring a card from the political leader in the district in which he lived, he could probably get it, — otherwise he would certainly fail. Under conditions of that kind, a newly arrived immigrant who wished to be-

come a citizen of this country, judged the character of the city in which he was living, or of the state, by that of the district leader with whom he came in contact. If, with or without fault of his own, he got into trouble and was arrested, the district leader took care of him, sometimes in a way proper and right, sometimes in a way improper and wrong; but whatever the case, to the poor immigrant trying to get some conception of the country, the state of New York was represented by that district leader; and he is the type that the immigrant would expect to find in government. On this account it is extremely desirable, especially when we consider how numerous our immigrant voters are, that on their arrival in this country they get a good impression, and that the immigration officials should be gentlemen in their feelings as well as in their actions. Some of our immigration officials have, on that account, insisted that our immigration stations, especially the detention rooms in which immigrants must wait, often for hours, perhaps for days, should be kept neat and

orderly so that the incoming citizen should be given a favorable impression.

I recall a conversation with an immigration inspector in charge who reported that people coming to this country as immigrants, especially young men, were sometimes disposed to treat the immigration laws in a very flippant way. In consequence, for the examination of intending immigrants, he had a room well fitted up, with an American flag over the mantel, and he took his duties seriously. When a young man came in feeling that our immigration laws were wrong and that any country was foolish that attempted to put such restrictions or regulations upon immigration as does ours, and made slighting remarks about the country, he would call attention to the flag and ask, "Do you see that flag?" "Yes." "Well, it is no light matter to get into the country where that flag is to be your protection. Why do you come here? Is it not because you think that flag stands for something better than your former flag? If not, go back. If that is why you have come, I am going to put

you under oath to answer my questions truthfully, and if you seem to be the honest kind of man we want, you may enter. If not, you will be rejected." Such a conversation was likely to make the intending immigrant realize better the nature of citizenship. It is a matter of the gravest importance that the conception of our state and our government that not only our newly arrived immigrants, but also all of our citizens, have, be a high conception. One can scarcely emphasize too strongly the importance of the fact that the conception of the actual state that most citizens get is largely determined by the government officials with whom they come in contact, and that their ideal is formed by the circumstances in which they live. If I am struggling from day to day to secure the ordinary comforts of life, — food, shelter, and clothing, — I am looking for a state that will make conditions better for the laboring man. My ideal is likely to be to live more easily than I have been living; and very many citizens will not look much beyond that. If they find that the man

in power in politics is willing to secure their support by illegitimate means, they are likely to get a low conception of the state.

Let us not misunderstand these conditions, for this principle applies to all classes in the community. If instead of being a hand laborer I belong to the small class of the idle rich, I am likely to think, and conscientiously, too, that the chief duty of the state is to protect property and to see to it that the present status of affairs is not too radically changed. Such a view is inevitable. I have been born and brought up that way, and a change in the circumstances of this country would probably be a change for the worse for me, — so, naturally, I assume that it would be a change for the worse for all.

Again, as has already been intimated, persons whose chief interest is in literature and art and the refinements of life of all kinds are likely to believe in a state that will promote education, establish beautiful parks, erect magnificent art galleries, and attempt to give the people higher artistic ideals; while, again,

those whose interests are chiefly in ethical or religious reforms will lay their emphasis upon a state that will promote morals and religion, as they understand the highest type of morals and religion. This is human nature. In consequence, when we are speaking about the legislative action that should be taken or the way in which social welfare should be promoted by governmental action, we must remember that the people with whom we are going to deal in bringing about governmental action and who are to back us in our efforts, will have, must have, their conceptions of the state and of governmental action formed very largely by the conditions under which they live.

We need also to consider the scope and limit of governmental activity. The field of activity will be limited only by the will of the state. The state is all of us. The extent of governmental activity, then, depends upon us and will be determined very largely by what we are and what our ideals are. It is a problem that every one should think of when he begins the study of social reform.

The limitation of the activity of the state by the will of the people means that its activity will be determined by the resultant of the wishes of the different classes in the community, and will depend upon the stage of civilization and the customs of the time. The less advanced the stage of civilization, the more it will be dependent upon custom. The more advanced the civilization, the more will the will of the people be determined by the independent judgment of the citizens. Perhaps the best test that we can have of the stage of individual advancement in civilization is the extent to which a man is ready to free himself from the bonds of custom and to think for himself. If we study communities as a whole, historically, we shall find that people in the lower stages are ruled most by custom, which often has the force of religion. In the higher stages they are bound less by it. In consequence, reforms are made most easily and most frequently in advanced civilizations. Likewise in every community the classes that are most influential socially are those that will

determine the action of the state. In most cases, naturally, owing to the selfishness of human nature, the action of the state is likely to be along lines that will further the interests of these dominating classes, whether they dominate by force of numbers, the influence of wealth, the power of intellect, or in some other way.

For many years, centuries perhaps, the political and social policy of England was largely determined by the landholders. They composed the dominating party. They were the social leaders in the state, and legislation was largely in their interest. In Australia and New Zealand, of late years, legislation has been determined largely by the so-called working classes, because they have been the most powerful class in the community and in consequence have controlled; and they, like the landholders in earlier days in Great Britain, have controlled largely in their own interests. The personality of the ruling officials selected by the dominating classes will likewise determine how far the state shall go. A strong

ruler will wish to extend the action of the state; he will enjoy responsibility. A weak ruler will hesitate to take responsibility and in consequence is likely to restrict the action of the state.

A man lately referring in conversation to a certain administrative official of a great educational institution, said: He doesn't like to take responsibility. Some of the men who work under him were inclined to criticise his predecessor because he went ahead too actively, decided too promptly, but after some experience with a weak leader, they would be glad to find one who would make a decision and tell what is to be done."

Most people like a personal ruler who will make prompt decisions and who, in a time of crisis like that of war, will strengthen the government and increase the scope of its activities, and then in time of peace will lessen them. There has been no time in the history of America when the central government of the United States has so dominated as in the time of the Civil War, and yet Lincoln was not a

man to grasp power for its own sake. He simply followed the demands of the times, controlled by those demands as were the others. So, like Lincoln, the great rulers, Alexander, Peter of Russia, President Jackson, have not hesitated to take the responsibilities that the times have thrust upon them and to lead the people. By so doing, they have merely expressed the will of the state as it existed at that time.

The value and the permanence of the results that are sought for in any reform movement or in any type of governmental action, depend largely upon the adaptability of the movement undertaken and of the principles on which it is based to the special conditions of the time. Those, therefore, who wish to improve the welfare of society must study carefully the conditions of the state at the time of their movement, and must see to it that their reforms are adapted to those conditions.

CHAPTER III

PRINCIPLES OF LEGISLATION FOR THE PROMOTION OF SOCIAL WELFARE

III

OF late years social reformers have spoken much of preventive legislation. In the past, however, the most usual form of legislation has been protective, that forbidding harmful acts, — criminal legislation. Usually penalties have been imposed as a punishment for the commission of crime, and sometimes direct means of control are provided so that the commission of such acts is rendered difficult, if not impossible.

What is the purpose of the penalty imposed for the commission of crime, — murder, assault, theft? The penalties imposed ordinarily include capital punishment, imprisonment, fine. The purpose ought to be the promotion of social welfare. Probably, however, until the last twenty or thirty years, while the protection of society was prominent in the

mind of the legislator, the dominating thought has been punishment. At present practically all writers on government and social reform have simply abandoned that position, and now urge that the penalty is for the benefit of society, not at all as a mere punishment for crime.

Assuming that, one should consider first the nature of some of the crimes and misdemeanors that it has been thought wise to forbid. Many acts forbidden by the state would not usually in themselves be considered wrong. They have been declared crimes or misdemeanors simply because, under the circumstances, the legislators have thought that these acts will do harm to the community. In themselves, under differing circumstances, they would not be morally wrong. For example, until the passage of the Interstate Commerce Act, no law forbade discrimination by railroads in rates charged shippers for the transportation of goods. It was generally expected that if a shipper sent 10,000 tons instead of 10 tons, he would receive better rates. That was a natural supposition, and there was at first no in-

tentional wrong done by such discrimination. Under those circumstances, however, certain large shippers were able to extend their business until eventually they secured a monopoly; then it was realized that giving better rates to large shippers was doing harm to the public and was permitting, if not promoting, monopoly, thus favoring the interests of a certain class or locality to the detriment of a different class or of a different locality. Under these circumstances, discrimination in rates was finally declared to be contrary to public policy, — a misdemeanor, and people were forbidden, under fear of punishment, to offer them.

While the disturbances were going on between the native Filipinos and the Americans some years ago, a military order was issued that no one should be permitted to go out of the village at night without a guard. It was known that he who went took his life in his hands, and as each person was needed in the community, it was thought best to forbid by a penalty the taking of that risk by any person. It is readily seen that when certain acts under

usual conditions would be perfectly normal, under special conditions they will be injurious, and in consequence should be forbidden. Such acts are of a nature, of course, different from those that we always consider wrong, such as murder, usually personal assault, theft, and similar crimes. The difficulty usually lies in determining how far legislation of this kind should go. We all recognize that it is proper for the state to forbid a person suffering from a contagious disease to go out and expose the public to the danger of infection. The restriction may be enforced in two different ways, — either forbid the act by law, and if it is committed, arrest and fine the perpetrator; or provide a pest-house and see to it that every one afflicted with the disease is put into that house and kept there under the care of the state until cured; or, with similar intent, place a guard about a man's house and compel him to remain indoors until the danger is past. No one questions the reasonableness of such legislation.

In the most civilized states, laws exist for-

bidding the cruel treatment of animals, — the torturing of dogs, the brutal beating of horses. A man doing these acts is arrested and fined. Why? Probably because from our training we have become much more sensitive than are people in earlier stages of society. To save our feelings we pass these laws. As we progress in civilization, we feel it also an immoral thing to be cruel to animals, and we forbid the cruelty because it is wrong; but it is probable that we should never have thought of the wrong had we not become sensitive to the unpleasantness of the sight of the cruel act. I recall seeing once in Pekin a dog that had been run over by a cart, dragging its helpless hind quarters along the street, and the people passing paid no attention. At another time a man was seen lying helpless, apparently dying, in the street. A passer-by had taken from him a string of cash and dangled it before him just beyond his reach, teasing him as cruel boys at times tease a dog, and he, reaching out his hands and struggling for it, tumbled over, apparently fainting, if not dying. A group of

people stood about looking on, apparently from idle curiosity, some enjoying the fun; but the great mass of people simply passed by paying no attention. In a country like that, laws forbidding cruelty to animals will not be found; but as we become more and more sensitive we pass laws forbidding people in any way to wound our moral sense or our feelings.

Certain things are forbidden under the name of a "common nuisance." Foul water or things emitting a disagreeable stench are not permitted, even though they may not be considered unhealthful. If a factory is so situated that it makes a disagreeable noise, disturbing sleep in the neighborhood, it may be abated as a nuisance. And there can be little doubt that as time goes on and we become more sensitive to odors and sounds and sights, it will appear to be even more for the welfare of society that we stop these things. Where shall a limit be placed? We doubtless are to go still farther in the future in the way of protecting our artistic sense. In some localities even now we forbid builders to put up certain

types of structures. It is probable that we shall eventually make provisions that the houses along certain residence streets shall conform to the artistic sense of the community as expressed by the building inspectors. Even now we forbid too high buildings in some localities; but this regulation is ordinarily placed on sanitary grounds. Eventually regulations will doubtless be much more severe.

At present these acts are mostly local, and the penalties proposed are marks of the stage of civilization and the type of the community. We must expect that the laws in states like China or Japan will differ from those found in France or the United States.

It is hardly right to speak of one civilization being higher than another in this particular. It is much better to speak of merely a different type of civilization. And yet different stages of civilization can perhaps be judged in part by the penalties imposed for crimes and misdemeanors. It is only some fifty or sixty years since in Great Britain the death penalty was imposed for stealing sheep, though now that

is a crime punished only by fine or imprisonment. The heavier penalty was not good public policy, because if a person's life were forfeited for killing a sheep, he would commit murder rather than submit to arrest, the penalty being no greater. The penalties for most crimes have been much lightened in all civilized countries, and an attempt has also been made to adapt the punishment to the nature of the crime; and this makes for civilization.

As public opinion changes, it is wise also to change the penalties, since in countries like Great Britain and America, too severe penalties will not be enforced. The juries simply refuse to convict, and the existence of laws that people are unwilling to enforce is a serious evil, as this tends to bring about disrespect for law and in consequence an unstable condition of society. Moreover, in this way real criminals escape punishment entirely, and society thus becomes unsafe.

In the ancient days it was the custom for each individual to look after his own interests, and himself to punish the people who had in-

jured him. In such a stage of society injustice was frequently done because the criminal with a strong hand could often escape punishment. As society progressed it was seen that there could not be an orderly and peaceful community unless the state assumed the responsibility of punishment for wrongs done to individuals as well as for those committed against the community at large.

The difficulty in all these cases is to find some principle by which to protect society against wrongdoing and yet not to weaken it by lessening individual responsibility. It is right that the community be protected against the injurious acts of the individual; but if the artistic sense of the community as represented by some building inspector is to determine what types of architecture shall be permitted in certain streets, is this not likely to check artistic originality of thought? And may it not well be that buildings considered inartistic now will look very different to the eyes of our successors thirty years hence? We must be very careful not to weaken individual strength of thought

or to discourage artistic originality; but nevertheless the line must be drawn so that the community as a whole shall not be too much tortured by the original thoughts and acts of private individuals. In university towns it is not particularly unusual for the inhabitants to be wakened at night by students exercising their artistic tastes in song and otherwise, so that people living in those communities believe that care should be taken to protect the ordinary comfort of the community, even though it may interfere at times with the liberty and development of the individual.

Not only may the state properly forbid actions that are disagreeable, wrong, or unjust to society, but the state may likewise compel individuals to take actions that are directly beneficial to the community. It is usual to compel railroads to furnish reasonable equipment for traffic, passengers, and freights. Failing to provide sufficient facilities, they are compelled to do so or be fined forthwith. Similarly, private individuals are required to build sidewalks in front of their own grounds

for the use of the public. If this is not done, a public official does the work and collects the pay by taxation. In most communities, people must keep their walks clear of snow, see that their garbage is removed at proper times, and perform other acts for the benefit of the public. In this direction also the difficulty is to determine how far the state shall go and what acts shall be considered merely private.

In most states if a person makes a will for the disposition of his property after his death, he must make it under certain restrictions, providing properly for his wife and children. If the provision is not so good as thought wise under the law, a widow at times can take her choice between what the law for intestacy would give her and what the will provides. In many states the private individual is compelled to do things that the legislature has declared to be for the good of the state; in some, even, laws have been passed to compel bachelors to marry at a certain age, otherwise they are under penalty of fine, though in most states such a law would be considered extreme.

In the Philippine Islands the leading families used to be in power; and the heads of those families, the Caciques, were recognized by the community as leaders, so that other people rarely failed to obey practically any order coming from them. Often a mere suggestion from them had the force of law. Repeatedly, when American officials were to be entertained in some of the villages, they would be given a reception, a ball or dinner. Under those circumstances, the Caciques were in the habit of sending word to this member of the community to bring so many chickens, to another to furnish so many vegetables, while others were invited to be present to wait upon the distinguished guests. In that way the entertainment was nominally furnished by the Caciques, but practically by the people of the community acting under orders. The common people did not try to dispute the authority of those who ordered these contributions; they doubtless felt that, as a matter of public policy, those entertainments should be furnished to the American officials. We in this community feel, how-

ever, that these acts were far beyond any that are right and proper, and in accordance with public policy, and that for the ordinary people of a community to be ordered by the leading citizens to supply any part of a public entertainment is going much too far. Here, too, the difficulty is in drawing the line at the proper place. Each state must fix the line for itself; each state must compel action by private individuals, and the state itself must undertake the performance of certain functions. Likewise, it of course supplies the facilities and means for enforcing the laws.

In some countries the telegraph and the railroads are owned and operated by the state. We permit our local governments to go their own way very much farther than it seems wise for the state or federal government to go. Every country village and township is expected to see to it that the public roads are laid out and cared for. Corresponding to these township roads in our larger states and in the United States as a whole are, of course, the railroads. We have not gone so far as to say that our

governments must provide the railroads and care for them. In care for the development of the individual our practice is somewhat different in the case of local matters, because the local taxpayers may come together and discuss the question of public expenditures. They determine whether they will build a schoolhouse or lay out a new road, and each man can see practically what effect his action is going to have on the public and upon himself. He may say, Spend $800 on that schoolhouse in building a wing and that will increase my taxes by so many dollars. Every taxpayer is in a position to know just what it costs him to have that improvement made, and just what benefit it will be to him and to his neighbors. The situation is much the same as in the case of a private corporation. The difference between a public matter in these small political divisions and that of a private corporation is slight, since each man can see accurately the situation as it concerns himself. Under those circumstances, there is no danger of the people being pauperized by public ac-

tivity. When, however, a large state like New York or the federal government cares for the citizens, this danger of pauperization comes. Each individual feels that what he can get from the state does not come directly from himself. The limit of the field of public activity should therefore be different in local governments from that in the central government. When the source of expenditure is so far removed from the citizen that it seems to be giving him something for nothing, the pauperizing effect is likely to be felt.

We have seen that the law-making body may forbid the citizens to do certain acts or it may order things done by them; but it may go still farther than this and may develop among the people right inclinations. Much has been said of late years in this country and in England regarding preventive measures against crime being better than corrective measures after a crime has been committed. In consequence we establish reformatories instead of prisons. We attempt to make the young criminals over into better men instead of merely

punishing them for crimes committed. There are two reasons for preventive measures: the first, economic in its nature. It is a great deal cheaper to take a criminal, put him into a reformatory where good influences are brought to bear upon him, teach him a trade, develop in him good habits, so that in three or four years he will be made over into a self-supporting citizen, beneficial to the community, as one who produces more than he consumes and whose influence, on the whole, is good, than to put him into a prison, where he remains for a period of years, unrepentant, nursing his feelings of hostility to the public, and learning from his fellow-prisoners new tricks in his criminal trade. When he comes out he is almost certain within a short time to commit crime, be caught and sentenced again, and thus to become practically a burden on the state for much of the term of his natural life, perhaps for twenty or thirty years. It is much cheaper to train a man well for three years than to support him for thirty years, whether he remain in prison or prey on the community at large.

But aside from the economic reason is the duty which a state owes to its citizens. We saw in the beginning that the state exists for the benefit of us all, to develop in each individual his powers to the best possible advantage. Our legislators should so make the laws that even the poorest, the ignorant, or the criminal, shall get what will help to make them better and stronger and more useful. That is the prime purpose of the state. If we are to establish reform schools for this purpose, the same reason makes it proper for the state to provide commercial schools and technical schools of many kinds. Training is the best kind of preventive legislation against crime, incompetency, and weakness. In the United States it is generally believed that primary schools are necessary for the safe existence of the state; people must know how to read and write in order that they may perform the elementary duties of voting citizens. But why should the state stop there? Why not go further and teach the citizen to work so that he may the better earn a livelihood and the better perform his functions as a work-

ing member of the state? Is it not of consequence that the boy should be taught so that he can easily meet the primary needs of the human being for food and clothing and shelter and in that way more easily get leisure for studying and thinking and developing the higher type of life? Is not that of more consequence than merely reading and writing? For if his entire time is to be devoted to providing his daily necessities, he can do little in the way of self-development. But, on the other hand, unless we draw the line at primary teaching, where can we find a limit to the state's educational system? If we provide the citizen with a business training so that he can earn his daily living more readily, why not go further and cultivate his æsthetic sense by teaching art and music? How can the state stop short of providing art galleries and public universities where an individual may secure the higher education of the type best suited to his wishes? If we grant this, will it be possible to stop even at this point, or must we require the state to install theatres and opera-houses where the

people may have their æsthetic tastes developed at public expense? Theatres and operas are subsidized now in some states in Europe; but there is danger of the state furnishing so much to the citizen, as was probably the case in ancient Athens, that he will to a great extent lose his self-reliance.

Ought we possibly to go a step farther and at public expense teach morals and religion? Is not this likewise a kind of preventive legislation against crime? Experience has shown that a gas-light in a dark alley is cheaper and much more efficient in the prevention of crime than is a policeman. In the city of New York individual workers in our college and social settlements can probably be found who have done more to prevent crime than three times their number of policemen in those same neighborhoods. In many communities there are individual preachers who have cost far less than the city has paid in salaries for magistrates and who have stopped an even greater amount of crime. Is there any principle by which we can determine just where the state's

activities shall cease and no experiments further be tried? If we invite people to become intelligent and moral through educational means furnished by the state, why not go farther?

Shall we have a private church or a state church? In many countries it has been thought desirable to have churches supported by the government. In the United States that has not been thought a wise policy, and when the question was raised with the founders of our government, they said that religion is a matter for the individual. If individuals wish to have a preacher of their own denomination, let them provide themselves with one. It is not quite certain perhaps that this is the right reason for our separation of church and state. We have generally considered religion a means of satisfaction of individual needs, and in consequence we have compelled individuals to form and support their churches. From the point of view of the public, the churches might well be looked at in a different way. They are institutions to promote the highest welfare of the

citizens along the highest possible lines. That public policy regarding religion should be adopted which, in the end, will best promote the social welfare of the community, and that, as has been said before, will depend upon local circumstances in nearly every case. The probability is, that while state churches are not best for us, they may be best in some other countries.

I recall that, as a student in Germany, I visited at times the normal schools and talked with the scholars. Generally speaking, they enjoyed their lessons in religion as little as any of their studies. They found it tiresome daily to commit to memory hymns and phrases from the Bible to repeat to the teachers, and they dreaded the hour. If this were the result of a state religion or of a state teaching religion, the effect would surely be bad; but quite possibly this may simply have been the result of a poor method of planning the teaching of religion and not the result of the state's activity.

Many countries have a state church and are satisfied with it. It has not seemed with us

good for either the church or the state to combine them, — not because there is any fundamental objection to having the people manage their religious affairs through governmental agencies, but because, considering the kind of people we are and the religions which, on the whole, we have professed, we reach results best by keeping religion separate from politics.

Likewise, with reference to the different kinds of education. Each community must settle that problem for itself. If it wishes a public art gallery, a school of music, or a theatre, the city may very appropriately contribute money for that enterprise. Generally speaking, there is danger in not cultivating individual initiative, but the ways in which this shall be done are various. Most people in the United States regard the free public schools as the best type. Most of us do not realize that the English people feel that we are wrong. It is only of late years that public schools have been started in England, where the theory prevailed that if something is paid for the child's education, there will be no danger of pauperizing the

boy or of discouraging individual initiative. And whatever the method we adopt in each locality, the development of individual initiative should be emphasized.

One point more regarding the type of legislation should be kept in mind. Very often results can be accomplished better indirectly than directly. Many times laws are passed apparently to attain some immediate aim of the people, and the real end is secured only indirectly. Alexander Hamilton is usually counted the best early defender of our protective tariff system. He advocated the system, not primarily to yield a revenue, though, of course, that was one purpose, but rather for the indirect purpose of strengthening and solidifying the industrial and social development of the country and rendering it more self-sufficient and independent of others. The protective tariff, therefore, was established to strengthen ultimately the country. The other aims of protection, though immediate, were only secondary.

Very many laws have indirect effects, and in

making them we need to consider the ultimate aim and ultimate result, — something that often is more important than the immediate result. Take, for example, marriage laws. The legislature must recognize the attraction between the sexes; people will be married at any rate; but a proper shaping of those laws may have extremely important results in determining the physical and moral welfare of the community. If public sentiment is back of the legislature, the age limit of legal marriage without the consent of the parents may gradually be raised. In most primitive communities the age limit of the marriage relationship is likely to be very low, children of thirteen to sixteen frequently marrying. Public sentiment can greatly improve social welfare, and the legislature can help by pushing the laws to the utmost limit that public sentiment will stand. The age has been gradually raised year after year until now in our most advanced communities children are practically forbidden to marry until they have attained an age sufficient to enable them to appreciate the re-

sponsibility of the marriage relationship; and as the average age of marriage has increased, the physical welfare of the offspring has doubtless been improved. It is questionable if there is any legislation in western Europe and the United States that has been more protective of social welfare in the long run than this increase in the age of legal marriage. And yet the method of producing the result has been entirely indirect.

On the other hand, most evil results have been brought about in some countries in a similar indirect way. In Bavaria, for example, a number of years ago, the expense and local restrictions upon marriage were, relatively speaking, very great. The effect was unsettling on the marriage relationship. Many young people, feeling it impossible, or at any rate inexpedient, to get married, simply omitted the wedding ceremony. In consequence, for a series of years, illegitimate births were numerous, however faithful the parents were to one another in their personal relationships. A change in the law in 1868 produced an

immediate effect. In the years 1859–1868, on the average 22.4 per cent of the births were illegitimate, while from 1869–1878 the percentage fell to 14.2 per cent.[1] Further change would doubtless reduce the number still more.

But besides these more fundamental questions, the legislature may often use other lesser desires of the people to accomplish worthy ends. For example, the inclination of all, especially the young, toward amusement and recreation, is often utilized by the state in establishing parks for the benefit of the public health. Recreation piers in our great cities exist not so much for recreation as for health. But the benefit to the health of the community would not come if the people could not be amused.

The desire of many people to occupy positions of prominence or to rule over others is an incentive often made use of by the state in securing for our higher official positions the lead-

[1] Conrad, "Handwörterbuch der Staatswissenschaften." Article, "Eheschliessung."

ing men in the community, men best fitted to rule. If we could not count upon these sentiments, as well as upon unselfish public spirit, it would be impossible in many instances to secure for the public service men of a high type, unless we were to pay salaries so large that they would be a burden upon the public; and even then these services could often not be secured.

Perhaps the best example of indirect legislation to procure good results is found in various methods of taxation. The primary purpose of every tax, of course, is supposed to be to secure sufficient revenue to support the state, but indirectly the tax is used for many other purposes; for example, that wealth may be more beneficially distributed. Our inheritance tax is often advocated on this principle. When people of large income die, the family pays a considerable portion of the wealth over to the public, and thus the wealth is redistributed in the community. Many people advocate carrying this principle much farther, so that large fortunes will not remain through

more than one or two generations; but there is, of course, danger of carrying this too far.

At the time that the Trust Conference was held in Chicago, the suggestion was made that a tax be imposed upon certain classes of monopolies that had apparently been fostered contrary to the public interest; and then, that the monopolies which failed to live up to the regulations should have their taxes greatly increased, so that those tending to become injurious should be taxed out of existence.

At the time of the formation of our national banking system, taxes were laid on notes issued by state banks to tax them out of existence, and our federal bank note system became universal.

In Switzerland the sale of alcohol has been made a public monopoly, — in part to secure a revenue, but primarily so that this dangerous traffic may be directed so as to produce the least possible injury; and at least ten per cent of the net revenue secured by the state is expended to combat alcoholism,[1] — one of the

[1] Constitution, Art. 32 bis.

most striking instances, perhaps, of legislation attempting to secure indirectly an end not directly aimed at.

Enough examples have been given so that the principle will not be overlooked as one fundamental in legislation, that almost all laws have certain indirect effects which may not be clear to the public, but which the legislature should always endeavor to discover and keep in mind. The circumstances of the special case will determine whether a law directly affecting the welfare of the people or one that works its benefits indirectly, will be best.

The state frequently finds it best to create special agencies for putting into effect its laws or even for working out the details of a system of legislation. The federal government has created the Bureau of Corporations, and the Interstate Commerce Commission, and the states of Wisconsin and of New York have created Public Service Commissions whose functions are not merely to administer laws, but also in the administration of the laws to lay down rules and regulations, some of which

are legislative in their nature. Such agencies continually engaged in administrative activities can more easily see the needs and make regulations for the control of interests that might become detrimental to the public than can the legislature that meets at rare intervals and comes less closely into touch with the forces actually at work in society.

CHAPTER IV

LIMITATIONS ON LEGISLATIVE ACTIVITY

IV

IN the preceding chapter we have seen that legislatures may often promote the welfare of society by active measures, either in the way of restricting acts that in themselves would be injurious to society, or in the way of promoting directly or indirectly acts that will tend to make men better citizens or to further the good of society. It is perhaps no less important to consider the limitations of legislative activity, for in very many instances, however inclined we are toward sensible action and wise judgment, through our lack of information we may at times attempt to seek the impossible, thus wasting energy. Or, again, if our energies are misdirected, the result may be the accomplishment of harm rather than of good. There can be little doubt that many of the reform movements that are strongly advo-

cated by our best-meaning citizens are at times ill advised.

Members of legislatures say that advocates of social reform are often unwise in the specific plans which they advocate, even though the end which they desire is good. Some years ago a number of well-meaning citizens went to Albany to urge upon the legislature the desirability of securing uniformity in the keeping of municipal accounts. The suggestion met with the approval of a number of the most intelligent and public-spirited members of the legislature. The advocates of the reform had suggested the establishment of a State Municipal Board, perhaps a non-salaried Board, with a salaried secretary, whose business it should be to see that cities kept their accounts in the way prescribed by law or by the commission. The members of the legislature thought that, under some circumstances, the plan would be admirable, but they said that no law providing for such a commission would pass the legislature. The legislature disliked commissions; and yet the same result might be obtained in a

different way. Why not authorize the Secretary of State to detail some clerks to take charge of such work, — then no new office would be created and the legislature would probably be ready to carry out the reform. This suggestion later bore fruit. Through the supervising direction of the comptroller's office, a uniform system of accounting was prescribed for the cities of the state. We need to note, then, that there is frequently a limitation on the way in which a subject must be approached in order to secure its passage by a legislature.

Again, reforms cannot go far beyond the active wish of the people. Many subjects are taken up regarding which the people care very little, either one way or the other. They have little active interest in either pushing or opposing them. In consequence, such measures may readily enough be carried by the efforts of some legislators who take an interest; but if anything of prime importance to the people is to be passed and opposition is met, there must be a strong popular sentiment back of the project. Most of the members of the legis-

lature, under ordinary circumstances, wish to be reëlected, and perhaps in consequence they heed clearly the wishes of their constituents.

As has been suggested in preceding chapters, the people are normally conservative, and every legislator wishes to avoid the reputation of being a radical or an extremist, because in the minds of most constituents radicalism is opposed to good sense, as in many instances a man's reputation as a humorist is likely to weaken people's belief in his good judgment. Moreover, the people test radicalism in a way that while perhaps not always fair, is nevertheless understood by the members of the legislatures. Anything that is out of the common, anything that goes far beyond present custom, is with rare exceptions felt to be tending toward radicalism; and this the legislator will usually avoid. In many sections of the United States it is not customary to drink beer and wine regularly. Those who do drink are inclined to drink to excess. The consequence is that in those regions, if one mentions temperance legislation, it is understood that he is speaking

of teetotalism, and the people are rather too likely to attempt to suppress all drinking of any kind of alcoholic drinks, even the most innocent. On the other hand, in most parts of Europe where the people are accustomed to drinking light wines and beer they do not often drink to excess. When, in consequence, one speaks in those countries of temperance reform, he does not mean teetotalism at all; he means merely that one ought not to drink spirits or brandy to excess. It is scarcely expected that any one will refrain from drinking wine or beer. In Switzerland, therefore, where they go so far as to take ten per cent of the net profits of the state alcohol monopoly for "the suppression of alcoholism" they do not mean by temperance preventing people from drinking wine or beer, but merely preventing them from drinking spirits to so great an extent that they become common drunkards. In that country, any one who should attempt by legislation to change the custom of drinking wine or beer would be looked upon as an extreme radical, a man without judgment, one who

ought to be distrusted; and legislators are naturally sensitive to any such reputation.

On the other hand, occasionally there sweeps over a country a wave of popular excitement on some question, and the people themselves become extremely radical from the point of view of the legislators. Under certain conditions in Switzerland, the people, by petition of a certain proportion of the voters, may demand that a bill be prepared by the legislature, considered, and submitted to the people for their approval. Under this provision certain extremists succeeded in arousing popular hostility and pushing through a measure abolishing compulsory vaccination.[1] An even more extreme action was taken under the federal initiative and referendum in Switzerland. A comparatively few people, strongly anti-Semitic in their beliefs, put themselves actively to work to make living in Switzerland uncomfortable for the Jews. With this purpose they introduced in 1893 an amendment to the constitution for-

[1] Lowell, A. L., "Government and Political Parties in Continental Europe." Vol. I, p. 287.

bidding the slaughter of animals for food purposes by bleeding. Their open argument was that they wished to prevent cruelty to animals. In fact they succeeded in awakening much public excitement on that question and in passing a law forbidding the method of slaughtering animals employed by the Jews, so that those Jews who were in the habit of living up to their religious customs had difficulty in securing meat.[1]

There is, therefore, a possibility that the people's wishes may be swayed back and forth to extremes, and under such circumstances they are likely to push through legislation that would be considered unreasonable by people of judgment, with ordinarily conservative habits. The more intelligent reformers, therefore, ought, on the one hand, to recognize the fact that legislators ordinarily will not favor radical measures on account of the conservatism of the people, but that in certain instances the people themselves may be roused to the

[1] Lowell, A. L., "Government and Parties in Continental Europe," Vol. II, p. 284.

advocacy of measures which will be more radical than an ordinary legislature would willingly pass. If, however, the people pass extreme measures, after the wave of excitement is over and their reason has returned, the laws are likely either to fall into disuse or be repealed. The question will be considered later whether the executive ought to enforce a law found on the statute books which he considers bad; but we all know as a matter of experience and from our knowledge of human nature that laws on the statute books that are opposed to the wishes of a majority of the people will rarely be enforced. Such neglect of laws, especially of those lately passed, tends to inculcate among the people a disrespect for law and order. Moreover, securing the passage of a law of this type, which will soon fall into disuse, is a waste of energy and a discouragement to people who are striving for legislation steadily progressive in its nature. It is, therefore, an unwise policy to attempt to move much faster than public opinion will follow, when we wish to secure the passage of

measures looking toward the improvement of society.

This does not mean, however, that legislators should merely attempt to follow public opinion. A legislator who does only that has not much originality and certainly not the right public spirit. In many cases he is a moral coward; in others he is a demagogue. Members of the legislature should attempt to lead public sentiment and should attempt to secure the passage of laws that are as far in advance of public sentiment as they can get the people to follow; but they ought not to proceed more rapidly than that. The process should be first the education of public sentiment, then the passage of legislation slightly in advance of it, in order that the legislation itself may be the means for a still further advance in the right direction.

Reform movements are also limited by the character of the legislators. This is a somewhat different way of stating a proposition quite similar to that just discussed. In many instances a person who is a student of public

questions, a specialist in legislation, will understand the people; and he will be prepared to introduce and advocate measures that seem radical in their nature — measures which most members of a legislature might disapprove, but which in reality are in accord with public sentiment. The legislators oppose either because they are corrupt or weak or misunderstand the people, or because some few of their constituents oppose.

In one of the decisions handed down by the United States court in Minnesota regarding certain railroad legislation in that state, District Judge Lochren, rendering the decision, after calling attention to some of the unjust characteristics of the legislation in question, added: "And it seems to me, in view of the severe penalties denounced by these acts of the legislature, that the officers of the corporations could not have done otherwise than to have refused to act under those circumstances, . . . There is no question but that such legislation is vicious, almost a disgrace to the civilization of the age, and a reproach upon the

intelligence and sense of justice of any legislature which could enact provisions of that kind."[1]

In this instance the judge seemed to consider the members of the legislature either vicious or so weak that they were unwilling to withstand popular clamor when the people were being swept away by a sudden wave of popular excitement.

When, some ten or fifteen years ago, ballot reform acts were introduced into the legislatures of many of our states, corruption of the ballot was very general in the cities and even throughout the states. There can be no doubt that public sentiment was very strongly against corruption, and that in most states the people were prepared to accept any measure of ballot reform that seemed reasonable and that they thought would really check vote-buying. When, however, the reformers prepared their bills and brought them before the legislatures, many members opposed them, although usually the opposition was not direct. Gener-

[1] Perkins *v.* Northern Pacific Ry. Co., 155 Fed. Rep. 449.

ally, objection was to the form of law proposed. Most members wished to keep party organization intact and asked to have a ballot of such a form that it would enable the ignorant man to vote a straight party ticket, and that would encourage, so far as possible, the voting of straight tickets instead of encouraging independence. By thus providing for party regularity, through amendments to the reformers' bills, they in many instances succeeded in defeating in part the real purpose of the legislation, although they did not dare directly to throw out the bills. In other instances the managers of the political parties that had depended the most upon corruption for carrying elections and that had the largest campaign funds to use for those purposes were opposed to any reform measure. Not daring, however, to oppose the reform directly, they added amendments which would still enable them to use money corruptly. We need to bear in mind that the members of legislatures are not merely human beings but human beings with very strong interests, sometimes with

strong prejudices, and that in consequence we shall find that strict limitations will be often placed by the legislators upon measures intended to reform society.

In the study of individual legislatures or of the individual members of various legislatures, we should recognize that bills suitable for one state might be entirely unsuitable for another. A bill might well succeed in New York when it would fail in Kentucky, or *vice versa*. The promoter of social welfare by legislative means must first consider the end that he will attain, then introduce the bill that will, as far as possible, meet the prejudices and wishes of the legislators with whom he has to deal, and in that way accomplish his results. The end should be kept in mind and not the particular form of the bill. Students of politics are likely often to feel that our somewhat extreme reformers, often spoken of as "professional" reformers, seem to care more for the form than for the substance.

People often complain that members of the legislature are attempting to block a reform or

to put obstacles in the way for selfish reasons, when the fact is that the members of the legislature know that it often is much easier to bring about a reform somewhat slowly, in order that the measure may not be so far in advance of public opinion that it will not be properly enforced. In consequence, they advocate the adoption of the reform by successive steps, so that through a partial measure the public may be gradually informed, and that thus with the development of public sentiment the reform may be safely and certainly carried through.

In many instances, where it has been impossible to persuade a state legislature to adopt a law restricting the hours of labor for women and children, it has been possible to make provision for an investigation. This has been so at times, because there has been some corrupt interest opposing the legislation, often merely because the legislators were convinced that the people were not yet ready for a complete measure, and that in no other way could popular sentiment be so wisely developed as through a careful investigation which should make the

real facts known to the public. After the people's sentiment had been properly developed by an investigation, they would be ready then to accept the legislative measure that should prove wisest.

Generally speaking, the labor unions have been very practical in their ways of securing shorter hours of labor by legislative means. They have often been willing to take what they could get. For example, if they can secure an eight-hour law for state work, with the provision that all contracts for state work must be done on an eight-hour basis, they have been content with that, thinking that with this step and with the experience thus gained, it will in the future be much less difficult to secure an eight-hour law for all kinds of work. Without expressing any opinion as to the wisdom of legislation concerning the hours of labor, there can be no doubt that it frequently is wiser to attempt to move slowly in the adoption of reforms than to insist upon securing everything at once.

Another method of testing public sentiment

and of securing the ready adoption of reform measures is by permissive rather than compulsory legislation. When, for example, it was first proposed that a federal incorporation act be passed under which the great corporations, especially those engaged in interstate commerce, might be organized under federal law, it was suggested by many that there be passed an excellent law, on the whole favorable to the best corporations that were doing an honest business, and that it should be permissive in its nature. If, then, a considerable number of the largest, the best, and the most influential corporations should organize under that law, because they wished to let the public know that they had nothing to conceal and because their interests would thus be furthered, other corporations not coming under the law when it was offered them would be discredited. They must then either change their methods of doing business or the value of their stock would probably fall. It was thought that under those circumstances even the worst of the corporations would eventually be forced either to organize under the

new law or to adopt measures of publicity which would enable the public to see that their business was being conducted along right lines. In this way, after a time, the law which was at first permissive in its nature, might gradually come to have upon its side so strong a pressure of public sentiment that it could be made compulsory and applicable to all corporations that it was desirable to have thus affected.

The whole question of compromise in legislation, which has awakened much controversy at times among moralists as well as among students of politics, may be summed up in a few words. In promoting legislation one should always be sure that his aim and his principles are right. Then as a compromise he may choose the time and the place and within reason the means and the methods for bringing about immediate results, and he should be cautious not to attempt to go too fast.

But aside from the limitations upon legislative activity to be found in the active wishes

of the people and in the character of the legislators, still others are to be found in human nature and the ways in which it must be influenced. It has often been found that it is unwise to attack too directly and too sternly some of the weaknesses and passions of men and women, because frequently more harm than good will result. The attacks upon the vices and evils of society must be adapted to the time and place, and the wisest means must be chosen. While beyond doubt there has been a steady progress in society toward lessening the ill results coming from the liquor traffic, from the social evil, and from other curses of society, direct attacks have often failed of serious accomplishment. The aim of all legislation on such questions, of course, is to elevate society by putting a control over human weaknesses, especially by getting the different individuals in the community to control themselves. Unfortunately, many people do not control themselves. Legislation should therefore bring influence to bear so as gradually to develop the habit of self-control. In some

instances this can best be done by removing temptations or by putting individuals under such circumstances that they can more readily resist temptation, at times perhaps by the substitution of some innocent habit or custom to take the place of the injurious one. Human needs and desires are likely to secure some satisfaction. It is wise to secure this satisfaction with the least injury to society. In the attempt to solve such questions we need to be especially guarded against our prejudices, and it is usually found wise to pay close heed to the opinion and judgment of people who have had so direct experience that they may speak with authority.

No better illustration can be found, perhaps, than the question of the sale of beer and light wines in the army canteen in the Philippine Islands. Acting under the pressure of public opinion, particularly of ardent temperance reformers in the United States, Congress in 1899 forbade such sale in the canteen in the United States army, even in the Philippine Islands. It is not the purpose here to

argue the question pro and con. It is sufficient to state the situation and give the opinion of some experts. Attention has already been called to the fact that practically all of us are dominated by custom, and that this dominating influence is strongest on the people who are least well trained, least educated, least highly civilized. The enlisted soldiers in the United States army and in the English army, excellent as they are in many particulars, are likely, excepting in war times, when men of all classes enlist, to be those who have not succeeded well in other activities. Sometimes they are men who, from recklessness or other fault of character, have got into trouble, and in consequence have joined the army. I do not wish to attack the character of the average private soldier. There are many exceptions to the statement made above, but very frequently that is the fact. The average army officer will tell you that his men, in very many instances, have been accustomed from boyhood to getting their social amusements in saloons. They have been in the habit of sitting in such places with

others, drinking more or less, sometimes to excess, smoking and card-playing, taking there most of their amusements. In the army canteen, the custom had been to permit the sale of beer and light wines and of the usual non-alcoholic (soft) drinks, but not the sale of stronger liquors; to permit smoking, card playing, and games of practically all kinds, but not to permit gambling.

Any one who knows the situation at our remote posts knows that when a man is off duty, the surroundings are deadly dull. The soldier does not have a taste perhaps for reading, or athletic games, nor for riding or walking about to observe the beauties of nature; his training has been of a different type. Unless the canteen is provided where he can not only meet with others, play games, and talk with his companions, but also obtain the refreshments, including the beer, to which he has been accustomed, he is practically certain to go to other places where the situation is far worse. Near the army posts in the Philippines, along the streets and drives just outside the lines, are rows of

saloons and dives of the lowest type, and the men who, under different circumstances, might well have been taking their relaxation in the canteen, have been taking it in these lowest places. Would it not be contrary to human nature if they were to do otherwise?

It is said that there are army officers who do not favor beer in the canteen, but it has never yet been my fortune to talk with one who did not believe that the canteen of the old type was a benefit to the soldier and to the army. A general of the United States army, whose judgment on most matters has been highly prized by our government, a man of great executive ability, put the matter in some such way as this: "I think the judgment of the army officers ought to be taken on a matter of that kind. Many people think that we are prejudiced in favor of the old canteen because we ourselves drink. Now I do drink wine now and then, though I do not get drunk; but what the people who are opposed to us fail to realize is the profound interest that I and every military officer must have in this question of the army

canteen. Our success depends upon keeping our men sober and orderly and ready for fighting. When I was in the Philippines in command of troops, I knew that my success, my reputation, my hope of promotion, even my very life, might well depend upon keeping my men in the best possible fighting trim. Would I be advocating the old canteen under circumstances of this kind if I did not feel from the experience of years that with it I can best keep my men sober and in the best fighting condition?"

In the discussion of such questions we sometimes shrink from looking directly at the facts. Many questions of social evils are in themselves repulsive. In consequence, with a shrinking feeling of dread of the subject we simply say, — "I will have nothing to do with it. I will simply oppose it," without considering that through such ignorant opposition as to methods we often do great harm. We should do well, unless we are ready to study such a question and speak with intelligence, to refuse to take any part at all, but simply to trust to experts.

At the time the question of the importation of opium into the Philippines first became pressing, the government appointed a commission to investigate and report upon the proper legislation. This fact, however, did not prevent a very active propaganda throughout the Far East among the missionary societies in favor of the absolute prohibition of the importation and sale of opium in the Philippines. Every one who cares for the prosperity of the Islands is, of course, opposed to the opium traffic, but the best way to attack so subtle and varied an evil as opium smoking is very difficult to discover. But the prohibitionists circulated throughout the Far East a petition requesting the government to prohibit its importation except for strictly medical purposes, thus settling beforehand in their own minds the question of the wisest policy. A young woman missionary in Japan, when asked to sign, replied in substance, — "The President of the United States thinks that he does not yet know enough to decide what is the best method to stop the opium evil

in the Philippines. He has at his disposition the knowledge of his officers, the resources of the United States government. Since he confesses that he does not yet know and has appointed a commission to make further investigation, it would be presumptuous for me to assume that I know more than he. I ought not to sign the petition; I do not know enough to express any opinion. I should rather trust to him and those whom he has appointed to investigate." That is the attitude that we, as citizens, and that the members of the legislatures ought to have in regard to many public questions. The legislatures should place upon themselves the limitation of refusing to act on many social questions without securing first the judgment of experts who have made a careful study of the influence of various measures.

This process involves not merely a study of human weaknesses in general, but likewise a study of the type of civilization of the people with whom one is dealing and their customs and training. Slavery or polygamy cannot be dealt with in a Mohammedan country as in

the United States. When, in 1899, General Bates made an agreement with the Mohammedan Sultan of Sulu which seemed to permit slavery and polygamy in that Island where they had been social institutions from time immemorial, there was a great outcry in the American papers against this so-called treaty, because we in the United States are opposed to those customs; and the President refused to approve regarding slavery. Of course we are opposed to such customs, but is that any reason why conditions should not be recognized? In fact, of course, the administration has eventually had to deal with these Moros in a paternal way, entirely different from that followed elsewhere in the Philippines.[1]

In the Federated Malay States in 1874 and following years the British took control. They found the institutions of polygamy and slavery firmly established, with public sentiment in their favor and with a civilization adapted to them. As rapidly as possible they put their

[1] Report of the Philippine Commission, 1904, Pt. I. pp. 5 ff. ; Atkinson, F. W., The Philippine Islands, pp. 246 ff.

officers in charge and attempted gradually to bring the people up to the English way of looking at those questions. In consequence, in the years that have passed, without any war, without any excitement, slavery has been gradually done away with as the result of the action of the local Sultans whom it has been possible to persuade, one after another, to pass decrees forbidding it. Polygamy also for the younger generation has at length been gradually abolished. The older men have not been compelled to put away their wives; the Sultan in some cases has retained more than one; but the Sultan's sons have only one wife and within a comparatively short time polygamy will have disappeared. Had the attempt been made to stamp out the evil immediately, the result would no doubt have been war that would have been a worse evil to the natives and probably a worse evil to the civilized world than the tolerance of these institutions for a few years.

In very many directions laws that would be suitable to conditions in the city of New York would be ill adapted to conditions in New

Orleans, and if there is the same evil to overcome in the two cities, it may well be that the methods of attacking those evils must be different. Not long since I met a lady in New York who was opposed to woman suffrage and spoke vigorously against it. "But," she added, laughing, " when I was in the state of Washington, I voted for President McKinley and I was proud of it, and if I was there now, I should probably vote and think that my duty."

If the social conditions are not kept well in mind, we are likely to act not merely unwisely, but often unjustly. In every crime, of course, there must be an evil intent. Now, if a social custom has in any country been generally recognized and a person without wrong intention follows that custom, it would be grossly unjust to punish him for his act until he is educated to see that his act is wrong, — then it may be forbidden.

It is desirable also to avoid too much legislation. Probably Herbert Spencer goes too far in decrying over-legislation, but most of us are too ready to assume that, if there is any

evil, the best remedy is to get a law passed. In very many instances it is better to let the evils work out their own cure. For example, over-capitalization of our great corporations has doubtless been a serious evil in this country, but any man who has followed the conditions of business for the last ten years would doubtless say that probably three-fourths of the evils that followed from over-capitalization in the years 1890–1892 have already been overcome. In most instances, as soon as the evil was clearly recognized, business men set to work to prevent its recurrence; and while in all probability some legislation would now be wise and would have been wise several years ago, the need was not so great as was at times assumed. The legislation needed is rather regulation through publicity than an attempt directly to forbid over-capitalization.

One can hardly avoid in this connection a brief reference to socialism. While there are many classes of socialists, they practically all believe that the power of the state should be increased until it would take very active con-

trol of the productive industries of the country. This seems to me most emphatically over-legislation. My objection to over-legislation in many cases is that it checks individual development and takes away from our citizens the power of self-reliance. Unless a country is entirely different from most democracies, the care of individuals by a government far removed from them, as has already been said, is likely to check individual initiative. So far as I know, the socialists, and I have many friends among them, have frequently assumed that the nature of industrial activity is the same in all states. In my judgment, human nature is such that there never can be uniformity in all states in all industries. Some industries are probably adapted to control by the state. Others never will be adapted to control by the state, because they depend largely on individual initiative and genius. For such industries there ought not to be a common central control. On the other hand, we can best perhaps get coöperative control of many great industries, especially those that are public in

their nature, through a city government; but it may well be that while one city would control and operate a street railway to excellent advantage, another city with differing conditions or with a different policy would fail utterly.

We should not think that human character, human motives, human ways of looking at questions, can be changed much by legislation. A man who is selfish, grasping, dominating, in our present industrial society would be the same type in a socialistic state. It is in his relations to other people that he is really anti-social, and if you change the form of our social institutions without changing the nature of the man, he will still be anti-social. If he is a man of ability, of strong personality, born to rule, instead of being a captain of industry, he might well become a governor of a socialistic state; but we may be sure that in that capacity his selfish anti-social characteristics would still remain, and the welfare of society would be sacrificed to further his own selfish purposes.

The usefulness of legislation, finally, to sum

the whole matter up in brief, is strictly limited. Relativity is the key-word to legislative action. Laws must be fitted to the place, to the time, to the people, and extravagances and over-legislation must be avoided.

CHAPTER V

THE WORK OF THE EXECUTIVE IN THE PROMOTION OF SOCIAL WELFARE: THE CHIEF EXECUTIVE

V

THE fundamental principles that underlie the work of the executive in the promotion of social welfare are much the same as those which underlie that of the legislature. In both cases the work must be adapted to the time, the place, the conditions of the people; the relativity of human interests and of human institutions must be kept equally in mind. Nevertheless, the nature of the work of the executive is so different from that of a legislator and his influence is brought to bear in so different a direction that it merits separate discussion.

In all countries the chief executive stands before the people as the representative of the entire state far more than does any other official in the government. Even though the powers of the executive are constitutionally coördinate with those of the legislature or of the judiciary, as has been authoritatively de-

clared in our own country, nevertheless the executive represents the state in the minds of the people far more than do either members of the legislature or of the judiciary.

The prime reason, perhaps, for this is that there is likely to be more ceremony, more formality in connection with his work than with that of others. It is he who is the head of the army and of the navy, and in consequence he stands before the world as representing the power of the state. Moreover, in all dealings with foreign countries, it is the chief executive that speaks for the country as a whole. Any communication coming from a foreign country, whether it be some trifling request affecting merely an individual, or a diplomatic question affecting the welfare of the nations, must be addressed to the chief executive or to his representative. In consequence, in the eyes of foreign nations he is the head of the state. From this fact comes much of the ceremony ordinarily connected with his work. In the United States we think much less of ceremonial institutions than do most of the

countries of Europe, where the executive as king or emperor finds it desirable to uphold the dignity of his position as the one supreme head, a position above that of the highest judge or of any one connected with the legislature.

In most countries of the world, until within a comparatively few years, even if not now, the belief in the divine right of kings had given to the person of the chief executive a sacredness belonging to no other. He represented not merely the state, not merely the laws, but also there was a feeling that there was "a divinity that hedged the king," and this fact, of course, justified a ceremonial. There is a relic of that feeling in practically all the important countries of the world, excepting some of the newer republics, that makes itself felt in a very pronounced way in the administration of practically all institutions that look toward the improvement of the social welfare. It is noted in many instances in the allowances granted to the chief executive. For example, the President of the French Republic receives first a

salary of about $125,000 a year in addition to an allowance for expenses of an equal amount, $250,000 to compare with the $75,000 and travelling expenses specially voted, if at all, allowed the President of the United States. When, however, the President of France travels, he is expected to go in state with a large suite. When he visits a city, the freedom of the city, in the technical sense, will be offered him; he will be met with a military escort and practically the same ceremony will be used that would obtain in the reception of a foreign potentate. The same kind of expenditure and ceremony is found to even a greater degree in the case of the kings and emperors of Great Britain, Germany, and Russia, and even of many states that are much smaller and less influential.

Another reason, perhaps, for this great personal prestige is that the executive is one person. When we speak of our chief executive, we think of the one individual, the President; when we speak of our Supreme Court, we think of its nine members. The Chief Justice is a presiding officer with more or less authority in

connection with the allotment of the work, nothing more. In our Senate possibly some one man by virtue of his strong personality has more influence than his fellow-senators; but a ruler or a "boss" of the Senate holds his position by virtue of his personality, by virtue of what he himself has accomplished. He has no precedence in law or position.

The same fact holds with reference to the House of Representatives, although the Speaker of the House (even under the new rule which removes him from the committee on rules) is given a precedence over the other members greater than that possessed by any regular member of the Senate or even by the Vice-President; but when we are speaking of the executive in the United States, the President stands alone. All the other members of this great department are in reality his subordinates. The members of the Cabinet he appoints and dismisses practically at will. Under our civil service regulations many thousands of the minor officials are selected by different individuals, but as these appoint-

ing officials are directly responsible to the President, he in fact appoints all. This position as single head gives a dignity and power that cannot be possessed by any official who is merely one member of a group.

The position of the President of the United States is almost unique, even among chief executives, in that he possesses both the power that he may exert by virtue of his position and also the ceremonial position of the head of the state.

In Great Britain the nominal head, the ceremonial head of the society, is the King, while the active executive head is the Prime Minister. In France, likewise, the President is the ceremonial head, the Prime Minister the active executive.

In Germany the Emperor is not merely the ceremonial head, but to a great degree, is also the active head of the government if he wishes to be. Nevertheless, he has always standing by his side, responsible to himself, the Imperial Chancellor, who, though responsible to the Emperor, is still the chief of the entire executive

department in a sense in which no subordinate of the President stands in the United States. The Chancellor, to a great extent, does the work that is done by the President of the United States. The President is, therefore, both the ceremonial head of the state, and likewise the active executive head. We find in him a concentration of power and of personal influence that is perhaps found nowhere else, although the Emperor of Germany perhaps more nearly fills such a position than any other of the great rulers of Europe.

We realize too seldom how much the welfare of society depends upon the feeling of the people toward the ceremonial head of the state. We seldom realize how much we ourselves are influenced by ceremony. In Great Britain, with its aristocratic form of government, where the King is the head of society, with the members of the royal family ranking next, then the various ranks of the hereditary aristocracy, each holding its own proper rank and all keeping their precedence over the great mass of the people, we find perhaps the best

example in Europe of the power of ceremony and social prestige. However influential in political matters a commoner may become as a member of the Cabinet or as Prime Minister, socially he is ranked below any member of the House of Lords. In Adam Badeau's little book on "The English Aristocracy," the writer remarks that at formal dinners he has seen Mr. Gladstone, when head of the government, exercising almost dictatorial power throughout the state, walk into the dining room behind peers of his own creation and sit in a subordinate place at the table, outranked by many a peer whose influence in the state was practically nothing. In our own country we see, relatively speaking, little of such an influence of rank. But it is not entirely unknown here, and we can see how, in every state where social prestige is born of rank, a man's influence as a political leader would be very greatly hampered in many lines of work where social influence counted, if he happened himself to be but a commoner. Even in our own country, any one who has been at all engaged in public

or in philanthropic work knows how greatly his power is strengthened in the way of securing money or of gaining the influence of persons of power if people with high social standing have their interests enlisted and are willing to take personal trouble to further the good purpose in question. The social influence of the chief executive, then, is a very real influence in the promotion of social welfare, entirely aside from the power which he may exert in his official capacity.

In Great Britain King George has social standing and social influence beyond all compare,—greater than that of any one else in the Empire. In consequence the government in England has thought it best to place the King in a position to lead in all those matters which touch closely the feelings of the common people. There is contributed every year out of the public income to King George's purse for the purpose of making charitable gifts, something more than $60,000. Of course he could not be expected, although his private income is large, to give that sum out of his private

pocket; but these gifts, coming from King George, have an influence far beyond the number of pounds sterling contributed. Not merely the King himself, but practically all of the members of the royal family are likewise employed in various ways in the betterment of the welfare of society. If there is a large charitable institution to be opened, a great public fair to be inaugurated, the corner-stone of a new hospital to be laid, a great educational institution to be dedicated, or any other important ceremonial to be observed looking toward the uplifting of society, it is considered desirable, if not under some circumstances almost necessary, for some one connected with the royal family to be selected to make the opening address or to take the lead in the ceremonial. This is not snobbishness; it is merely the recognition of a real fact, that the people of England will give a great deal more weight to anything said by a person who occupies the social position of a member of the royal family than they will to the words of any one else in the kingdom.

The same influence is felt in many other ways in Great Britain. The great political parties have organized, practically on an aristocratic basis, great societies like the Primrose League, through which the influence of the so-called upper classes may be turned to good account in the promotion of the welfare of the people through strengthening the power of the political party which the members of these societies believe is advocating measures for the uplift of the people.

The same principle is found at work everywhere in Europe, and naturally enough because it is in consonance with the facts of human nature. There is a social grading based on various influences, often quite intangible, sometimes even foolish or ridiculous, but nevertheless strong, and this influence must be reckoned with. Although in the United States we sometimes are inclined to ignore social classes, we still find this influence to no slight degree and it can be used and is used in effecting social and political movements. If the President of the United States approves of a

novel or a poem, we know that this fact is likely to increase very decidedly the sale of that poem or novel, not so much because of the excellence of the President's judgment, although he may be a good judge of such matters, but because everybody knows who the President is and because the mere fact that he stands at the head of the state as its chief executive, gives his word weight that it otherwise would not possess. Similarly, if the wife of a President gives a handkerchief to a public fair to be sold for charitable purposes, we know perfectly well how helpful such a trifling gift may be, because the influence of the woman who is officially the head of society in the United States counts even from the money-making point of view. The President, then, far more than any other person, far more than any group of persons in the United States, is a molder of public opinion, and in consequence his influence upon public matters, whether political or social, especially when those matters are dependent upon public opinion, is far greater than that of any other person in the country.

But aside from the social prestige that goes with the office, the President's word counts officially for much. In connection with legislation in the United States, the chief executive, the President, recommends whatever legislation he pleases; and, what is perhaps of even more consequence, if he disapproves of any legislation that has passed through Congress, he may veto it. If he does, it takes a two-thirds vote of the two houses to carry a bill over his veto. In certain instances it will be found that the President's will can thus be thwarted; but such instances are very rare. In a very direct way, then, the chief executive may affect social welfare through his influence upon legislation.

Many writers on political science have called attention to the fact that in countries with a parliamentary form of government like that of Great Britain or of France, the chief active executive, the Prime Minister, is regularly a member of one of the legislative bodies and that his Cabinet is made up of men selected from the legislature. In consequence, it is

thought that the influence of the executive in those countries is very direct and perhaps is much greater than that of the President of the United States, where the executive is supposed to be entirely independent of the legislature. Of course, in practice it is found that the connection between the President and Congress or between the governor and the legislatures in most of our states is generally very close, so that although nominally the power of the executive in legislation may seem much less than in a parliamentary country, practically it is much greater than it at first appears.

The influence of the chief executive is more directly felt when laws duly made are put into execution. Unless a man has studied the question carefully, he is likely to underestimate greatly the real significance of the administration of law and the amount of discretion that must really be left to the executive in its enforcement. In many instances, a president or a governor is so controlled by public opinion that he will either defeat the purpose of the law, neglecting absolutely to enforce it, or, on the

other hand, will enforce an unpopular law with so much vigor and thoroughness that he will go beyond the wishes of the legislature or even those of the people themselves.

It is practically always within the power of a president or a governor to go to the extreme in either direction and still to stay within the limits of the law. If he desires a reëlection, he is likely to enforce the laws so as to please the majority of the people upon whom he is dependent. If they wish a vigorous prosecution of the law, he will secure it. If they are indifferent, he will carry out conscientiously his own views. If they are hostile, the law will lapse. This is so well understood that people generally assume that the President will be much more independent in the enforcement of law during the second term when he does not hope for a reëlection than during the first. Probably Presidents are often misjudged in this regard; and usually the influence of ambition, if felt at all, is to be noted rather in the nature of the recommendations which the President makes to Congress than in the direct

enforcement of the laws already on the statute book. But even in the latter case the President exercises much discretion.

Can a general principle be laid down with reference to the enforcement of a law that is not popularly approved? It has already been said in previous chapters that the law not supported by public opinion as a rule became a dead letter because the executive would not enforce it. But ought he to enforce an unpopular law? It will be recalled that some of the most patriotic and far-seeing executives in United States history have taken the position that they have sworn in their oath of office to enforce the laws as they have found them upon the statute book; that in consequence, if the legislature passes a law, they will enforce it even though they believe it not merely to be unpopular but also to be unwise and detrimental to the welfare of the state, believing that a rigid enforcement of the law will best show how bad the law is and that they may thus secure its repeal. Such men believe that it is better to have an unwise law enforced for

a short time than to have the people get into the habit of thinking either that the executive will neglect his sworn duties, or that a law on the statute book may be disobeyed with impunity. This is probably the proper position for an executive to take, with possibly one exception. Scores of laws remain unrepealed that nevertheless are rarely heard of or thought of. They have simply been neglected; people have forgotten their passage. Though they are still on the statute book, they are not in the minds of the people, and the conditions which called for their adoption and enforcement have probably already passed. They have not been formally repealed simply because they have been forgotten. Under such circumstances, we should be simply quibbling to say that it would be the duty of the executive to hunt up all such laws and to enforce them. When, however, a new law is put on the statute book, even though the executive believes it contrary to the best interests of the people and though the majority of the people may perhaps think the same, there seems to be left to the executive

no choice. It is probably wiser for him and better in view of his office, and moreover it is probably better for the public interest, that he enforce this law in order that the people may see it at work, and then leave it to the legislature to repeal it if that seems best.

The executive, with the promotion of the social welfare fully in mind, would probably enforce the new law, although in very many instances it might well be decidedly detrimental to his personal interests if he wished a reëlection. Though the people admire a strong executive for his courage, they are still likely to look upon a man who is troublesome in going contrary to their will either as unpractical or as hostile. Possibly in the long run he will gain as much as he will lose. If he is a man of conscience and is looking toward the development of his character rather than his minor interests, he will probably stand for what he believes to be the public interest and enforce the law. But most executives, I fear, will follow public opinion regardless of the law.

Aside from these somewhat doubtful ques-

tions of expediency the executive has much discretion in the interpretation of the laws before they get into the courts. A law that must be enforced by hundreds of subordinates in different parts of the country needs to have rules made for its enforcement, and those rules are often of great significance. Take, for example, the question of the collection of duties on imports. Generally speaking, the law has been made quite specific, and yet it is ordinarily assumed, and properly enough, that the intention of Congress has been to levy the duties on goods that are brought in for commercial purposes, and to exempt goods brought in primarily for one's personal use. For many years there were great differences of opinion on that point, and the usage among customs officers in different ports varied. Mr. Leslie M. Shaw, when Secretary of the Treasury, issued an order that if a person arriving in this country did not bring in more than $100 worth of goods that were for his personal use, these were to be considered trifling and no duties were to be levied. For goods valued at more than $100, the duty

was to be paid. This regulation changed the entire attitude of the customs service throughout the country, and yet nobody ever questioned the right of the Secretary to issue such an order.

Secretary Shaw was likewise criticised very sharply in certain quarters for another executive regulation. It is within the discretion of the Secretary of the Treasury to deposit in national banks a certain portion of the public funds and to take security for the safety of the public funds thus deposited. In his ruling on that subject, Secretary Shaw departed from the former custom. He deposited vastly larger sums than had ever been thought proper by any other Secretary of the Treasury. Moreover, he accepted as security for these government deposits collateral of a nature that would have been rejected by many, if not by all, of his predecessors. Many people said privately that they thought that Secretary Shaw had violated the law, but no one was willing to take the responsibility of challenging him for his interpretation, and no one questioned that it

was not only his right but his duty to issue regulations based upon his own conscientious interpretation of the law. In this case, however, the executive in the enforcement of the law practically made a new law as compared with anything done by his predecessors. Such powers may often affect greatly the welfare of the public, and this discretionary power of the executive is one that has often been overlooked.

In times of emergency, the executive may often, by his mere ruling, accomplish results that it would be impossible to secure within a reasonable time by acts of the legislature. Nevertheless, this power may become dangerous in the hands of an executive who might be unscrupulous and who might be willing to usurp power with danger to the liberty of the people. The executive, in the interpretation of the law, ought, of course, always to use his best judgment with the public welfare in mind. Unfortunately, not all people have the same common sense, the same wise judgment. If an executive were simply to say to his subordinates, "You must use good judgment in the inter-

pretation of that law and, if you find that under certain circumstances it works injustice, you must give it a liberal interpretation," we should probably find the same law enforced differently in different sections of the country where circumstances varied somewhat, or the interpretations might well often vary with the individual judgments of the subordinates. The only way to avoid this difficulty is for the chief executive, so far as possible, himself to put an interpretation on the law and through his regulations secure uniformity among his subordinates.

Any one who has noted the way in which immigration officials in different sections of the country have interpreted the law that persons who are liable to become a public charge should be excluded, will note not merely the idiosyncrasies of different immigration officials, but also in certain cases the influence of local public opinion upon them. Where there is a strong demand for labor, the immigration officials are quite likely to feel that an intending immigrant is much less likely to become a

public charge than the same man with the same amount of money would be under differing circumstances.

Any one who has had controversies with the Treasury Department over the way in which expense accounts should be made out and what is to be considered a matter of necessary expense by a government official will note in other ways the far-reaching effect of the power of interpretation resting with the executive.

Under these circumstances we can see how important it is that persons interested in the promotion of the social welfare should make their views known in proper ways to the executive, and should do what they can to furnish him with the data on which he may base his judgment in the interpretation of the law or in the method of its enforcement, so as best to further the interests of the public.

In his position as the chief representative of the state in foreign affairs, the executive takes the initiative in making treaties with foreign nations. When one thinks of the arbitration treaties that have been made among

the different countries within the last ten years, one can realize that the heads of the different states are perhaps in a position through the advocacy of measures for the promotion of peace and the lessening of the evils of war, if not for its abolition, that cannot fail to have the profoundest influence upon the welfare of society in all parts of the world. Although in many countries either the entire legislature or one branch of it has a voice in the approval of treaties, nevertheless the initiative must always be taken by the executive, and in the great majority of cases his views will be controlling. Not merely must this be the case because the executive represents the state as a unit, but also because in such negotiations it is often desirable that secrecy be maintained and secrecy is not a function of a multitude.

In the appointment of subordinates, the whole character of the administration may be determined so that in this power of the executive again we find that whether he is selecting subordinates as his chief counsellors in the formulation of public policies or whether he is

selecting merely assistants in the interpretation and administration of the laws, these appointments made by the chief executive will, after all, determine for good or ill the character of his administration.

With all these powers and duties which give him the opportunity of affecting profoundly the welfare of his country, the executive must still bear in mind the fundamental principle suggested at first, — that in the interpretation and the enforcement of the laws they must be suited to the conditions of the time and of the place and of the people.

CHAPTER VI

THE WORK OF THE EXECUTIVE IN THE PROMOTION OF SOCIAL WELFARE: THE CIVIL SERVICE

VI

THE way in which the power of the chief executive is exerted for the promotion of the social welfare, and the fact that he may properly be held responsible for the work done by his subordinates, have already been noted. But in spite of the responsibility of the chief, owing to the very great number of assistants needed and to the pressure of business, much discretion must be left to the subordinate officials, — so much discretion, in fact, that often their character and their way of looking at a question determine the policy of the government.

Most people who are engaged in social work come personally into contact with the lower officials rather than with the chief; and at times they are greatly annoyed by the way in which subordinates, either wilfully or carelessly, delay or block plans that seem of great

importance. On that account, it is desirable that we note somewhat carefully the part that the subordinates really play in the work of the state.

The executive has two kinds of work to perform. He must shape the policy of the administration and must determine the way in which the laws are to be interpreted and put into effect. In this connection also the chief executive must make recommendations for new laws. A chief executive like the President of the United States, in consequence, surrounds himself with the members of his cabinet and other high officials whom he trusts, whose chief business it is to assist him in determining his policies. Such an adviser should be a man of originative power and of administrative ability, one who can think out and plan new policies and who can so organize a great department that the laws will be efficiently administered.

But besides the consulting officials in every great country there is a horde of minor officials scattered throughout the state, whose

work is either largely of a routine nature, or who are to do as they are told, with little authority left them in the interpretation of the law. These officials have practically nothing to do with the framing of new policies. They are not advisers and their discretion is limited to the greatest extent possible.

For these two kinds of work, therefore, we ought to seek different qualities. The first class needs original ability and administrative power; the second, diligence, faithfulness, care.

It is desirable also that the advisers of the chief executive be men who can work together harmoniously. It has frequently been found very inconvenient to have members of the Cabinet, such, for example, as a Secretary of the Treasury and a Secretary of Commerce and Labor whose work is often closely allied, who are personally antagonistic or who have radically different views regarding public policy. Under such circumstances the President has sometimes found it advisable for one of the men to retire in order that the work of the govern-

ment may be efficient. In his first administration Washington found the conflicting views of Jefferson and Hamilton so embarrassing that even he was convinced that the Cabinet should be composed of men whose views were harmonious; and with scarcely an exception from his day to ours this policy has been carried out.

In order that the interests of the different sections of the country may be well represented, and also partly that local pride may be in a measure recognized, it has been customary for the Cabinet to be made up of men from different sections of the country. They are then in touch with public opinion in those sections and in a position readily to secure personal information which may be of value in determining public policies. The question has often been raised whether it might not be well also to adopt the policy of recognizing not merely different geographical areas but also different races or different financial or business interests. In some of the colonies of England it has been found desirable to have, say, the

Chinese or native Indians represented in the councils of the governors, in order that the welfare of these races in the community may not be overlooked. In our own country certain industrial classes, such as the trade unionists, have often suggested that they should be represented in the President's Cabinet. This principle might be readily extended to the recognition of the lawyers, of the Chambers of Commerce, even of various religions. Careful consideration, however, shows that any such attempt on the part of the President would almost certainly result in so great a lack of harmony that the work of the administration could not be efficient.

Moreover, such representation is not necessary in order that the President may be well advised. It is very easy for the President to secure any needed information. He has only to send to any group or class in the community an invitation, and they are very ready to accept and to furnish all of the information desired. These groups, in fact, do not think it necessary to wait for an invitation, but are only too eager

to furnish the President with advice without solicitation. It is sufficient, then, for the higher positions that the Presidents select men who can work together harmoniously; that they be capable, patriotic, sensible men, who can give important advice of the right type. Aside from this, of course, inasmuch as they are heads of departments with thousands of subordinates, they should be men of administrative ability.

Any one who is accustomed to observing the management of public affairs or of great private industries can soon note the difference in efficiency of the heads of an administrative department. When a new cabinet member of really great administrative ability is appointed, if his predecessor has been careless, he at times finds that he has to reorganize his whole department, as the president of a railroad might need to reorganize the work of railway administration. Usually, however, the organization is practically permanent with permanent officials, and the members of the Cabinet are appointed primarily as advisers of the President

and are men who shall determine the general line of the policy rather than the working out of the details of administration.

As regards the officials who do the routine work, diligence and faithfulness are the prime requisites; but here again, unless the question is carefully considered, we shall underestimate the amount of discretion that must be left to subordinates, even those whose work seems to be largely clerical. Consider for a moment the pressure of work resting upon the head of any one of the great departments at Washington or the Governor of the state or the President of the United States. If one has business with the President, he will probably find from thirty to fifty people waiting at the same time to see him. In an hour or two as many hundreds of people will have thought it desirable to call upon the President. It is literally true that he has thousands of letters and hundreds of visitors to dispose of in the course of every working day. The only way in which he can get through with his business and know with any degree of intelligence at all its significant

parts is through careful organization. All this work must be sifted, and only that which is of prime importance must be allowed to occupy much of his time. It has been the custom for the President to see practically every one who wishes to see him, but it is not necessary that he give each one much time. In consequence, matters are so arranged that he will give a few seconds, frequently less than a minute, to the majority of his callers who simply wish to pay their respects. To others who need an authoritative answer on some question that has already been laid before him, he can give two or three minutes if the business demands it. To members of the House and of the Senate in cases of importance he may give ten or fifteen minutes; and when a matter of first-rate importance comes up, something that requires the advice of his Cabinet or the opinion of an expert, he can readily arrange to give to such business an hour or two. All of this, however, requires a great deal of careful sifting, and that work must be done by his secretaries. It is largely at their discretion that his time is dis-

tributed. One can see that under those circumstances a great deal of power rests in their hands.

Moreover, if the President has to give an opinion on a matter of important policy, his time for investigation is very limited. When people talk about the hasty decisions made by Presidents and Governors, they should realize that practically every decision excepting on matters of first-rate importance must be made hastily, if made at all. They must make a choice between the decision of a President or a Governor made in a minute or two and a decision somewhat more maturely thought out by a subordinate. The evidence on which the President makes his decision must be prepared and digested and laid before him by subordinates, and however carefully this may be done, it is likely to be colored more or less by the views of those subordinates. It is only, therefore, the great questions of national policy, such as peace or war, or a revenue policy, or a matter affecting the welfare of great classes in the community, that the President can take up

of himself, study carefully at first hand, and decide independently.

As regards correspondence, a clerk must open the letters and make a first sifting. Most of them can be readily referred to a department or to persons whose business it is to answer that type of question without the attention of the President being called to them at all. Another secretary can determine most routine questions and decide upon the matters of sufficient importance to be brought directly to the attention of the President. Even in the latter case, in many instances the question may be considered and a reply drafted before the President considers it. If, then, he approves the judgment of his secretary, practically all the time needed is for him to read the letter and the answer already prepared and affix his signature. In most cases the secretary knows so well his chief's policy that there is no conflict of opinion; but in new matters or in those of prime importance the chief will make his own decision and even perhaps go so far as to determine the matter in person and

dictate the reply. Of course he always takes the time which seems to him best. His personal inclinations and tastes as well as the importance of the matter will determine his action.

The criticism is frequently made of a President or Governor that his judgment is swayed by a so-called "kitchen cabinet" or "tennis cabinet." This means merely that the President, knowing that he must make prompt decisions, is likely to find a group of well-informed men whom he can consult, whom he may properly ask informally to investigate for him the questions on which they are competent to give an expert opinion and whose judgment he is willing to trust. Often such men can be trusted more wisely than the regular subordinate whose time is taken up largely with routine matters and who is more likely to be biased perhaps by the custom of the department than is an outsider. We see that there is a justification for the existence of a "kitchen cabinet," provided its members are wisely selected and their advice taken in the

proper way. This need not in any way interfere with the proper functions of the official cabinet, the members of which will, of course, always be consulted on matters of general policy. They are also so busied with the administrative work of their several departments that they will readily welcome the relief from the demands of special questions not directly concerning their own departments. When we hear, therefore, of people who are supposed to have a "pull" with a chief executive, it frequently means simply that either their personal judgment is such that the executive may properly trust it, or else that their position in the community is such that their judgment is well worth while on a certain class of questions which must be settled by the executive.

The president of a great railroad system, from the nature of the case, is a man of unusual ability and of first-rate information on everything connected with his line of business. He is often consulted by persons with whose opinions he may differ; possibly at times his

interests may be contrary to those of the public, but he may well be consulted by the President on railroad questions. Men who have worked themselves up to important positions by merit, as have most of the heads of our great business corporations, are men of extraordinary, sometimes even of almost unique, ability, men who would be selected as one of a thousand or even a hundred thousand when the question is one of ability to grasp the bearing of an important question connected with their work. If a man of that type wishes to see the President, to talk with him regarding a matter of business policy which the government should adopt in connection with his special industry, would it not be wrong for the President not to see him and not to give him far more time for the discussion of the question at issue than he can give to the average visitor? He may differ with him in policy, he may very well refuse to accede to his wishes, but it is of extreme importance to the country at large that the President should know and carefully consider the arguments of a man who is one of the leading authorities in his line.

Again, supposing the question is one that affects the interests of the working men in the community. Ought not the President to consider carefully the arguments of the heads of the great labor organizations, one of whom may represent from one to five millions of people whose interests are affected? It is quite probable that the President may not agree entirely with the views of any one of these men, but he still should see them and discuss carefully labor matters with them. When the President takes such action, it is foolish for people to say that he is anxious to curry favor with the labor people or with the railroads or with the other interests concerned. He would be a poor man for his position and show a lack of statesmanship if he did not carefully consider the wishes and views of representative men or of experts in every field of activity which he is to cultivate. If he is to do his duty, he must take these things into consideration, even though he knows that he will be accused of truckling to the wishes of some particular class in the community. In

cases like this, it is, relatively speaking, easy for persons who have social reforms at heart, provided the questions are of sufficient importance, to bring them directly to the attention of the chief of the state without danger of having their opinions misrepresented or their progress blocked by some subordinate. The relative importance of the matter at issue and the degree of authority of the representative who speaks for that interest will determine.

In matters, however, which the subordinates must decide they need to be very careful, for if their chief discovers an attempt on their part to abuse their powers, they are likely to suffer. I have known of instances where a subordinate, through personal prejudice or personal spite, saw to it that proper requests or representations did not reach his chief. I recall an instance lately related to me of a subordinate official of a foreign country who went directly contrary to the views of his chief, because he had a prejudice against the country from which the question came and was making a citizen of that country the object of his spite. In

that special case his action happened to be discovered, and he was severely censured for the liberty that he had taken; but probably in nine cases out of ten his act would not be discovered, and the policy of the government would really be warped by the act of the subordinate.

Another point which persons attempting to affect the social welfare through the acts of government must consider, is that in a great department of government there must be discipline and authority. In consequence, if a complaint comes to the chief regarding one of his subordinates, he will naturally, unless he is a very broad-minded man and has reason to believe in the public spirit of the complainant, take the side of his subordinate as part of the machine that he is directing. Ordinarily he cannot take the time himself to investigate; he must send some other clerk to make the inquiry. The probability is also that in the majority of cases the faultfinding is unjustified and comes merely from the ignorance of the complainant regarding the way in which pub-

lic business must be done or regarding the precedents in the case. Numerous instances are found of criticisms which appear well founded against administrative officials high in rank, but instances are rare where a conscientious official cannot explain reasonably and satisfactorily most of these cases of complaint, if they are brought frankly to his attention.

And yet there are in the administrative service abuses that ought to be done away with. There are many subordinates who, from the nature of the case and the smallness of their salaries, are men of mediocre capacity. Under these circumstances, if a citizen is not captious, he will be doing a genuine service even to the man who seems to be at fault, if he will call attention to defects in the service. The conscientious official will have little or nothing to conceal. If he is making a mistake, he will welcome the opportunity to correct his error; if he is wrongfully accused, a vindication will strengthen him in the eyes of his superior and will also enlighten the complain-

ant regarding his mistake and thus do away with unfounded talk which, left uncontradicted, might easily affect unfavorably the public welfare.

In administrative work the normal tendency for subordinates is to follow precedents, and this tendency is strengthened as the positions become more and more permanent. It is much easier as well as safer for the average man to follow a precedent, to let his work become more and more routine in its nature, rather than to think out new methods for himself. If the head of a bureau has trained clerks who are accustomed to his methods, he can have them answer most of his letters rather than take the time to dictate them himself, and as regards routine matters the letters will be better written. The danger is that, owing to the fact that the clerks wish to get through their business as easily as possible, a matter that is somewhat out of the routine will nevertheless be forced into a routine form. In consequence it has often been said that the public business is run rather to save time and

trouble for the subordinate clerks than to promote the public welfare.

Another difficulty to be overcome is the desire of subordinates to curry favor with their superiors. In consequence, often without any wrong intention, they study the peculiarities and prejudices of their superiors, even when they believe them to be contrary to the public interest, and they are ready to make decisions on matters left to their discretion rather to please their superior than to do justice.

Taking all of these matters into consideration, the question of the method of appointments to executive positions becomes one of prime importance. There are practically only two methods — that of personal appointment and that by competitive examination. The chief officials whose work is largely that of advice and determination of public policy should not be chosen by competitive examination, but should rather be selected because of their known ability and prominence in questions of public policy with which they will have to deal. On the other hand, the selection of the thou-

sands who have to do the routine work is probably best made through competitive examinations.

Through an examination one may test knowledge and to a considerable extent ability. Through letters of recommendation it is possible to determine also experience and to a slight extent, perhaps, personal tact and judgment; but as a rule these latter qualities must be tested by experience in the office itself. Any experienced administrator, whether in business or in government affairs, knows that any kind of a man with reasonable intelligence can gain experience, but that ability to do work of certain kinds seems to be largely a matter of personal gift. I recall an instance of an inspector in charge of an immigration station who spoke of one man that had been in the service for twenty years who was absolutely faithful, who had done all kinds of work and had done his work reasonably well, so that no direct complaint had been made against him. "And yet," he said, "he is not entirely satisfactory, and never can be. Here is another man who

has been in the service only one or two years and in that time has done only two kinds of work and yet I could send him into a new kind of work, like that of inspecting a ship, and within two weeks he would do it far more intelligently and better than the first man who has done the work a hundred times. It is born in him. He knows how to handle people, how to discriminate, and that is a delicate kind of work, — something that cannot be tested by competitive examination."

When appointments are made through competitive examination and persons are appointed only from the accredited lists, the number of candidates from whom to choose is often decidedly limited. If one has, say, fifty people to appoint and a hundred have been certified, the selection must be made from that number. Possibly ten times that many would have been glad to take the examination and could have stood the test, had they heard of the examination or thought of themselves in connection with it, but they have not been put on the list. Appointing officers feel continually the

restrictions that are put upon them in that way; and yet the ablest among them would not be willing to give up the system of competitive examinations, because of the tremendous pressure from politicians and friends of candidates to appoint those who are incompetent, a pressure that sometimes is difficult to resist, if the appointing officer wishes to retain his position and salary.

On the whole, then, we may probably say that even with the limitations that one finds in the competitive system, it is the best one for the filling of subordinate positions.

A somewhat peculiar type of executive organization and one with which social reformers of various kinds have had much to do of late years is found in commissions, especially those which have to secure technical information of some kind. These commissions are at times closely associated with the legislature, at times with the executive. If the legislature needs to pass a new tax law or a new type of monetary legislation, it sometimes appoints a commission, either made up of its own members

who will do their work with the assistance of hired experts, or composed in part of members of the legislature, in part of experts appointed from outside, whose business it is to make a careful investigation of the subject at issue, prepare a detailed report with recommendations for legislation, and the reasons upon which these recommendations are based. In this way the technical knowledge of the expert is put at the service of the legislature, while the members of the legislature associated with the commission have the knowledge of public opinion and of the possibilities of securing the passage of measures recommended that would be wanting to the technical experts not familiar with legislation.

Other types of commissions are largely executive in their nature, such as, for example, the railroad commissions of the different states in the Union, in Great Britain, and elsewhere. It is their work to hear complaints of abuses, and within certain limits sometimes to make decisions that are even judicial in their nature, sometimes to make rulings that are similar to

the rules laid down by an executive for the administration of public business. In certain cases these commissions are composed of non-salaried experts who give little of their time to active work, but whose business it is to determine the general line of policy, while the active executive work is carried on by a paid secretary. Sometimes the commission, especially if its work is largely judicial in its nature, is made up of a small number of men who give their entire time to the work, and who are, in consequence, paid salaries.

The kind of work to be done will largely determine which is the better plan. If the work is largely executive or judicial in its nature, probably the second plan is better, and the pay should be high enough to secure the best type of men, unless the condition of the state is such that appointments are made as a matter of spoils. If, on the other hand, the work is largely advisory in its nature, particularly if it is more or less philanthropic as connected with charity, crime, etc., it is perhaps better to have the detailed clerical

work done by salaried people, but the advisory work by public-spirited citizens who are willing to serve from patriotic reasons. In many cases also it seems desirable to affect a combination of the two systems, as is done in Berlin in connection with the direct administration of charities, where with the public officials are associated public-minded citizens acting under public appointment who care for the poor and unfortunate and who give to the necessary official work a personal touch and sympathy that is a prime essential in work of a charitable nature, if the recipients of aid are not to be harmed more than they are benefited.

In practically all kinds of executive work, as in legislation, the specific plans to be followed must be suited to the conditions of the time and the characteristics of the people with whom we are dealing. Especially in work of a social nature we are dealing with individuals, and the chief quality to be desired in the official workers is a personality that will exercise the right kind of an influence upon the citizens with whom the official comes in contact.

In cases in which the promotion of the social welfare must be brought about by affecting the conditions or the character of the individual citizen, this personal sympathy, personal fitness for dealing with delicate questions is so needed that it is desirable that the work be done largely by those whose natural inclination leads them to it. And yet, of late years, there seems to be a tendency to load more and more of such work upon the state. If this is done, it is still desirable for private organizations and private individuals to keep track of the work and to exercise something of a critical attitude toward the administration while working as harmoniously as possible with it. In most cases, nevertheless, when the suggestion is made that more work should be put upon the state, the burden of proof rests on the individual making the suggestion, to show that the state can do the work better than can a private agency, and unless he can establish a *prima facie* case, the responsibility may better be left in private hands.

CHAPTER VII

THE WORK OF THE JUDICIARY IN THE PROMOTION OF SOCIAL WELFARE

VII

THE most direct work of the judiciary, perhaps its most important work, is that of declaring the meaning of the law. We ordinarily refer to the legislature as the law-making body. We think of the executive as the person or the group of persons that put the law into effect. As a matter of fact in every country where there are final courts of adjudication no one knows exactly what the law is when the legislature has passed it. The people have to wait until the courts in the interpretation of the law declare exactly its meaning. The executive seems to have a great deal of discretion in the interpretation of the law. But an appeal usually lies from the opinion of the executive to the courts, and only when the courts of last resort have rendered their judgment is there a final decision which determines the law. We thus see that the work

of the judiciary is not distinct from that of the legislature or that of the executive; both of them have their judgment as to the meaning of the law, and their judgment, of course, has weight; but the final decision rests with the courts.

Unless one has given careful attention to the real significance of this power of interpretation, he is likely to underestimate it. We all know that in our intercourse with our fellow-men differences of opinion frequently arise. It is probably no exaggeration to say that nine-tenths of the disputes which result in lawsuits arise simply as the result of misunderstandings and of differences of opinion concerning the meanings of laws, contracts and other agreements. It is very difficult for our minds to come absolutely into touch with those of others. We see things from our point of view, they from theirs. Moreover, it is often extremely hard to express one's opinion without ambiguity.

Our legislatures doubtless intend to pass laws that will be helpful to the community,

but the interests of individuals sometimes differ; and in the application of these laws to specific cases, as interests oppose, opinions clash. In consequence, the court in settling cases must read into the ambiguous or doubtful law a meaning that shall be final.

Beyond the question of ambiguity in the text of the law rises also the necessity of applying laws that have been passed decades or even centuries in the past to new conditions. Take for instance the interstate commerce law in the United States. When the constitution was framed in 1787, and the federal government was given power to regulate commerce with foreign nations and among the several states, the conditions of commerce were entirely different from the present ones. There was more or less traffic between the states, mainly on the sea-coast. There was a little traffic here and there by wagons and boats that crossed state lines on roads and rivers. The thought primarily in the minds of the framers of the constitution was the desirability of abolishing restrictive customs duties levied at state boun-

dary lines. The state of New York, for example, was imposing duties on kindling wood brought in from Connecticut and on vegetables brought from New Jersey, and on account of the annoyance of such customs duties this clause was probably inserted into the constitution. The makers of the constitution could not have, of course, any conception of the interstate commerce that now prevails, with our railroads running from one end of the country to the other; but our courts have been compelled to apply the principles laid down in the constitution to these new conditions as they have arisen. In consequence the courts have really the power and upon them rests the duty of practically rewriting old laws at any time that a new and great invention is made.

Another step was taken when the telegraph and telephone came into common use among the different states; still another when the electric trolley lines began running from one state into another; and we can now readily imagine the long series of decisions that must be made in the further interpretations of the same

law when our flying-machines of various kinds engage in traffic between the states and when passengers and goods shall be carried in the air over intervening states without stopping, but with a possibility, if not a likelihood, of either landing against their will or of dropping things from the air upon the premises of people living below.

The decisions of the final courts of appeal in the interpretation of eight-hour labor laws or laws restricting the labor of women and children and of those defining the conditions under which laborers must work in different states, have been the subject of frequent criticism, usually because it has been felt that the courts have attempted to thwart the will of the people as expressed in the legislature. Ordinarily the people making the criticisms look at the questions from the point of view of their own position in life. The courts have attempted to keep in mind the welfare of the state at large, and that not merely temporarily but in the long run and as a whole. The opinions of both have been conscientious. Frequently, in the

decisions made by our final courts of appeal, the decision is rendered by a majority of one or two with a minority opinion opposed to that of the deciding judges. In consequence we may readily see how uncertain and yet how profoundly significant is this power of interpretation which rests with the court.

In the United States, if a law is thought to conflict with the constitution, it is declared void by the courts, and this power of interpretation of the constitution is naturally of even greater significance than that of interpreting an ordinary law. In the early days of our constitutional government, the Supreme Court had to determine the general line of policy to be followed in determining the constitution. Two theories were brought forward, that of the strict interpretation, that of the so-called loose interpretation, — the one party saying that the federal government should exert only those powers that were specifically laid down in the constitution itself, the other party saying that the powers granted in the constitution of necessity implied other powers which the con-

stitution had by implication granted. The matter rested in doubt until the Supreme Court adopted the doctrine of the implied powers of the constitution. It is probably no exaggeration to say that this decision[1] at least doubled the power of the federal government as compared with what it would have been had the Supreme Court been made up not of Federalists but of Democrats.

It is almost impossible to exaggerate the influence which the judiciary may exert in the direction of social reform. Foreign observers of American institutions often speak with astonishment, usually mingled with admiration, of the power thus imposed upon our Supreme Court of declaring laws unconstitutional and void. In most other countries the will of the legislature determines finally the validity of a law; the courts may simply determine its meaning; but in this country our courts go farther and may even set it aside.

The real significance of this act, of course, is merely to say that in the judgment of the

[1] McCulloch *v.* the State of Maryland *et al.* 4 Wheaton 316.

court the legislature has misinterpreted the more deliberate will of the people, as expressed in the constitution; or that the people themselves, in influencing the legislature, have taken hasty action contrary to that formally expressed in their constitution. In consequence, the court gives to the people the opportunity, if they think the matter of sufficient importance, to pass a constitutional amendment in accordance with their deliberate will, which will enable them after this new deliberate action to carry out their will in practically any direction desired.

The fact that the judges are interpreting laws already made, often laws of even ancient date, makes them conservative, sometimes even perhaps too slow and reactionary; and yet it must ordinarily be conceded that the welfare of the community is furthered by well-considered, deliberate action.

Aside from the power of interpreting the meaning of the law, the courts have often much discretion in the nature of the decisions that they are to render in both civil and criminal

cases. In some states, after a person has been declared guilty by a jury, the nature and extent of the penalty which shall be inflicted is, within certain limits, left to the discretion of the judge. The law may say that a person judged guilty of a certain crime shall be imprisoned for a period of from two to fifteen years. The discretion is left to the court of determining the exact period. Moreover, in certain instances, the judge may even suspend sentence and allow the criminal to go scot free so long as he observes in the future certain conditions, with the liability of being rearrested and having a sentence imposed if he violates these conditions.

Again, if the court, in case of a technical decision or plea of guilty, believes the act committed excusable under the circumstances, it may impose a merely nominal fine of a few cents which practically amounts to declaring the accused innocent. Under those circumstances, a person technically declared guilty is practically found innocent.

Furthermore, the power granted to the

judge of ruling upon the evidence that is submitted, of enforcing discipline in his court, of charging the jury regarding the method in which they shall make their decision, is often a determining factor in the case.

Moreover, in many cases which affect profoundly the moral and social welfare of the community, our probate courts determine the interpretation of laws and the settlement of estates, a line of business which brings men into close relations with social affairs of the most intimate type. The will of the testator may well be thwarted by the interpretation of the court, or the will of a man who has died perfectly sane may be set aside on some slight technicality, or again the court may decide that a man who had ordinarily been considered of sound mind was insane or irresponsible at the time that he made his will. It is difficult to imagine cases in which the legislature or the executive could come into more intimate personal contact with the affairs of the people than do the judges of the probate courts in their routine work.

Judges are often the final arbiters in determining whether a person shall be committed to an institution for the care of the insane or of idiots, or whether he shall be allowed to continue to direct his own affairs as a normal person.

The question of divorce is one of so great importance, so delicate, and of such prime social significance, that in many countries special courts are instituted for the settlement of such cases. We know how strong the movement has been in this country toward securing a federal divorce law or some sort of an agreement among the different states to provide for uniformity of such laws. We recognize how excellent a reputation some of our states have for their divorce laws and the administration of those laws by the courts, and how unsavory a reputation other states have gained on account of their divorce laws. Even if we were to have a uniform divorce law throughout the country, there would still be much discretion left to the judges; and while it may be that people would stop moving from one state to another in order to secure a divorce, we may

be sure that certain judges would become very popular with persons seeking a legal separation.

Of late years there has been a decided change in the attitude of social reformers toward criminals; and the opinion that crime should be punished, not as a matter of public vengeance, but simply as a means of protecting society, if possible, through the reformation of the criminal, has altered the nature of much of our court work as compared with fifteen or twenty years ago. There are now in most of our states probation officers who may save many persons beginning a criminal life from the temptations which will inevitably be set for the criminal who is placed in prison. Juvenile courts have been created to restrain children before they become confirmed criminals, and in innumerable other ways our courts find themselves in a position to shape directly or indirectly the destinies of individuals to perhaps a greater degree than can the public officials in any other department of the government.

Attention should also be called to a certain class of courts that are rarely found in this country, but which have in them the possibility of great benefit to the public. Our courts exist practically for the purpose of settling disputes between different individuals by a final decision. In several countries in Europe, beginning, so far as I am aware, in France in 1790, followed by Norway in 1795, and later by Switzerland, there have been established courts of conciliation, whose business it is to settle disputes before they become matters of positive legal action. They aim to bring the disputants together without the intervention of lawyers, who are not allowed to appear before the courts, and to persuade them to settle their troubles peacefully without a lawsuit, thereby saving much hard feeling as well as great expense.

In Norway, for instance, in every little village or town, there are elected two judges for a term of three years each for these courts of conciliation. It is the business of these judges to settle peacefully disputes

brought before them. If a man has a complaint against his neighbor on account, let us say, of that neighbor's pig having ruined his garden, a misfortune that has often started important lawsuits in this country, instead of making a complaint in due legal form, he goes to the court of conciliation and asks that the offending neighbor be summoned to appear. He pays a fee of practically $0.25. When the defendant appears, the dispute is heard by the two judges, and they endeavor to arrange an amicable settlement, fair and just to both parties. In case the dispute is settled, a further fee of some $0.50 is charged. The entire cost has been some $0.75; the lawyers have secured nothing. If the court is unable to settle the dispute, any acknowledgment made by either party to the judges will not be used against him in the lawsuit that follows. If either party has made a statement to the effect that he was willing to accept the terms of settlement suggested by the judges of the court of conciliation, a certificate to that effect can be introduced in the lawsuit as evidence.

If the defendant refuses to appear when summoned, he must pay the cost of the summons. If the matter goes to law the delinquent must pay the costs, no matter which way the case is decided.

These courts of conciliation have been in existence in Norway for more than a century. General experience shows that more than three-fourths of the disputes that come before them are settled without assistance from courts of law. Of late years another power has been given to these courts. If the two parties to the disagreement are willing, they may make the two judges of the court of conciliation arbitrators, so that a decision will surely be rendered and it will have the force of a legal decree.

A judicial tribunal of this kind is extremely useful in the countries where it has been adopted, and such a court is worthy of careful consideration in any country. Already in North Dakota, and possibly in some other places in America, a beginning has been made toward the adoption of similar plans. There

can be no doubt that the suggestion of a wide extension of the system is of very great importance.

Considering the nature of the work which comes before them, judges, of course, should be absolutely impartial. Care should be taken in selecting them, and the methods adopted for their appointment should be such that only men of ability and of integrity, who will care only for the public interests and for the furtherance of justice, should be chosen. It has been the opinion of many writers on political science that judges should not be elected by the people lest they be influenced too much by the desire to win public approval, but that they should be appointed by the chief executive. It is, however, worthy of note that, generally speaking, the decisions of even the elected judges in the United States have been recognized as those of honest, upright men. Although there have been hostile criticisms at times against some of our lower courts, almost never have our courts of final appeal in the various states, or the United States courts, been subjected to

criticism. The decisions have usually been of marked ability, so that they have won the heartiest respect and approval of lawyers, writers, and the general public, both at home and abroad. People who believe in the appointment of judges instead of their election, apparently at times underestimate the influence that the traditions of the bench have upon elected judges. Men who have perhaps been active partisans and politicians, even corrupt when practising lawyers, become honest, upright, impartial in their judicial office.

Judges in most free countries have usually enjoyed the special respect and honor of the citizens as the upholders of law and of justice. With this tradition of office and with the feeling of confidence reposed in them by the citizens, they have usually been found worthy of the important interests entrusted to their care.

The question is sometimes raised as to how far judges ought to be influenced by public opinion. There can be no doubt that a judge ought not to permit himself to be swayed or influenced to any degree whatever by popular

clamor if he believes a person innocent, even though the newspapers declare him guilty. In this sense a judge ought not to be swayed by public opinion. On the other hand, judges are men and human. Many laws that were passed years ago must be applied to new conditions and new circumstances. Judges must determine the method of application of old statutes to new conditions. In consequence those conditions should be studied carefully, and in many cases the opinions of business men who are able to express an intelligent judgment as to present-day conditions ought to have, and doubtless at times do have, great weight with the judges.

An interesting suggestion has often been made that in some of our courts, particularly our courts of last resort, where a bench of seven or nine judges sits, hearing appealed cases, the court would be decidedly strengthened and would be more likely to do justice and to further the welfare of society if it contained some lay members. Instead of having the court composed entirely of lawyers, men

whose business it has been to study and interpret the law and to follow precedent, there should be with the lawyers two or three trained business men and scholars of political science on the bench, men trained to look at social conditions from the point of view of those who understand how those conditions have developed and who, if dealing with a business case, would appreciate the probable effect of a decision on the business world. There seems to be little doubt that if there had been some lay members on our supreme bench, some of the decisions affecting important business interests, for example, those in connection with the work of the Interstate Commerce Commission or in the interpretation of the Sherman Anti-trust Act, might well have been different, since the judges might perhaps better have appreciated the real social significance of the work of the railways and of the industrial combinations. However that may be, there can be no doubt that it is well for the judges to appreciate fully the economic and political side of legal questions.

Doubtless it would be a serious mistake to

have a majority of the court composed of men who are not thoroughly trained in the law. Certainly two-thirds of the court at least should be lawyers of standing, but possibly a minority might be well-trained, experienced business men or scholars of economics and politics of the highest standing and integrity.

Usually the judges have been the conservators of the rights and privileges of the citizens as opposed to an encroaching executive or legislature. In our constitutions we ordinarily have what we call a bill of rights. We find in our constitutions the statement made by the people themselves regarding the rights granted to the individual as against the executive and legislature, — certain privileges that cannot be taken from them. It has been left to the judges to enforce those rights and almost without exception they have done the work admirably. On that account largely they have enjoyed the respect and esteem of the people as upholders of justice as compared with our executives and the members of our legislatures, so that our people generally, if a

man has been put into a judicial office, are more inclined to respect his judgment than if he is appointed or elected to any office of another kind. It is worth repeating that this confidence in the judges on the part of their fellow-citizens has had a very strong tendency toward making them fearless, upright, and trustworthy.

CHAPTER VIII

THE WORK OF THE CITIZEN IN THE PROMOTION OF SOCIAL WELFARE

VIII

SO far in our discussions we have been considering the work of the government in the promotion of social welfare. It will be worth while in conclusion to consider briefly the situation of the individual citizen. Usually the citizen who, it is to be feared, is sometimes the "forgotten man" in our public life, is not looked upon as a part of the government. Yet there can be little doubt that the promotion of the public welfare rests upon private citizens almost, if not quite, as much as upon any official. And there is no reason why, in any democratic government, we may not look to the private citizen to take an active interest in public affairs. The opportunities of directly affecting the acts of the government are so many and so great that if he is a man of any strength of personality, he ought to feel his responsibility and be ready to take an active part in politics and in social betterment.

It has already been intimated that in all actions looking toward social progress some individual must take the initiative and very frequently this individual may not be an official. Any intelligent man interested in social reform may think out the best way of bringing about a reform, even though it is to be by governmental act. He may then prepare an appropriate bill, have it presented to the legislature by influential friends and take an active part in securing its passage. Perhaps nine-tenths of the best work of individuals in the direction of social reform has been done by public-spirited citizens not interested in office-holding for themselves.

Each of us should keep in mind our responsibility for the welfare of the community. Young men often feel that they cannot do much in the way of influencing social conditions, particularly conditions of government, unless they secure an office. It is doubtless the business of a political party to carry out its program and fulfil its promises, and in order to do this the party must secure the offices in any

honest way possible. So far as the individual, however, is concerned, it is not necessary that he get a public office either for himself or for his friends in order to promote social reform through the legislature or through any other branch of government. It is sufficient to make himself the best-informed person available on his subject and then use the influence that he can bring to bear upon the legislature to act for the good of the people of the state.

While in some individual cases, doubtless, we shall find members of the legislature who are corrupt, and, while most of them like other men are naturally inclined to favor their own interests, most of them will still feel that it is to their interest as well as for the public good to advance the public welfare, and they are usually glad to receive any sensible suggestion looking toward that end. Moreover probably nine-tenths of the social reform movements of the greatest significance would not affect unfavorably the interests of the members of our legislatures even if they were inclined to be selfish, much more selfish than in fact

they are. We still, therefore, have an opportunity to get them to do the right thing in the interests of the public. We might go much farther and say that a large proportion of the members of our legislatures would support a bill drawn in the interests of the public, even though that bill were opposed to their own private interests. It is usually enough to make them see clearly the nature of the measure proposed and the fact that it will affect favorably the public.

Responsibility rests upon us all in promoting the social welfare. Often philanthropic associations outside of the government are the most efficient organizations for promoting social welfare, either by the direct aid which they can furnish to some department of the government, or by work which they can do supplementary to that done by government officials. Consider the charity organization societies found in many cities in all parts of the world, whose work has supplemented that of the public authorities in the most useful manner possible; or note the influence of the State

Charities Aid Association of New York, which perhaps more than any other single influence has brought about the leading measures of legislation tending toward improvement in the efficiency of the work of our public charitable institutions. All such organizations have a very powerful effect upon the government and upon society. As individuals and as members of those associations, therefore, we are taking our part in the promotion of social welfare, if we do our work thoroughly and intelligently.

From private beneficence, also, the public has received at various times endowments of various kinds, more or less connected with the government, which have tended toward the betterment of society. Sometimes these are along lines similar to those followed by the government, as in the endowment of colleges and universities or hospitals; sometimes they are private parks, recreation grounds, art galleries that are often thrown open to the public for their use. The support of our public schools in the United States meets with almost universal approval. Nevertheless the work

of the public schools is often supplemented by private endowments to special schools and colleges of different types, so that in this way the people, through their public-spirited citizens, are often in actual partnership with the government in carrying out plans for the betterment of society.

No student of society and of the means of its improvement can overlook the fact that back of every good work is a personality. This is a point that cannot be emphasized too strongly and that particularly our younger citizens should keep in mind constantly, because perhaps the best preparation that can be made by young people to fit themselves for public work is to cultivate and develop a personality that will count with a continually stronger influence as the years go by. A man of the right character and a personality that gives him influence with others can make his work for the public welfare felt in private life practically as well as in official life. The vital element is not position, but purpose and personality.

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